

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

**MOTION RECORD OF THE APPLICANT**

(Re Comeback Hearing)  
(Returnable May 11, 2022)

May 8, 2023

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

**Larry Ellis LSO# 49313K**  
[lellis@millერთhompson.com](mailto:lellis@millერთhompson.com)  
Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**  
[pcorney@millერთhompson.com](mailto:pcorney@millერთhompson.com)  
Tel: 416.595.8555

**James W. Reid LSA#: 18109**  
[jwreid@millერთhompson.com](mailto:jwreid@millერთhompson.com)  
Tel: 403.298.2418

Lawyers for the Applicant

**TO THE SERVICE LIST**

**SERVICE LIST**

<b>TO:</b>	<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, Ontario, M5H 3S1</p> <p><b>Larry Ellis</b> lellis@millერთomson.com Tel: 416.595.8639</p> <p><b>Patrick Corney</b> pcorney@millერთomson.com Tel: 416.595.8555</p> <p><b>James W. Reid</b> jwreid@millერთomson.com Tel: 403.298.2418</p> <p>Counsel for the Applicant</p>
<b>AND TO:</b>	<p><b>msi Spergel inc.</b> 200 Yorkland Blvd., Suite 1100 Toronto, Ontario, M2J 5C1</p> <p><b>Mukul Manchanda</b> mmanchanda@spergel.ca Tel: 416.498.4314</p> <p><b>Philip Gennis</b> PGennis@spergel.ca Tel: 416.498.4325</p> <p>Monitor</p>
<b>AND TO:</b>	<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario, M5X 1G5</p> <p><b>Clifton P. Prophet</b> clifton.prophet@gowlingwlg.com Tel: 416.862.3509</p> <p><b>Heather Fisher</b> heather.fisher@gowlingwlg.com Tel: 416.369.7202</p>

	Counsel for the Monitor
<b>AND TO:</b>	<b>CRAIG 26 DEVELOPMENTS INC.</b>  Goeusl@aol.com
<b>AND TO:</b>	<b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto, Ontario, M5K 0A1  <b>Kelly Osaka</b> kelly.osaka@dentons.com Tel: 403.268.3017  Counsel for CanadaBis Capital Inc.
<b>AND TO:</b>	<b>CLARK HILL LLC</b> 3800 Howard Hughes Parkway, Suite 500 Las Vegas, Nevada, 89169  <b>Michael V Cristalli, Esq.</b> mcristalli@clarkhill.com Tel: 702.862.8300  <b>William D. Schuller, Esq.</b> wschuller@clarkhill.com Tel: 702.862.8300  Counsel for Jamie L. Pearson
<b>AND TO:</b>	<b>CASSELS BROCK &amp; BLACKWELL LLP</b> Suite 2100, Scotia Plaza, 40 King Street West Toronto, Ontario, M5H 3C2  <b>Marc Mercier</b> mmercier@cassels.com Tel: 416.869.5770  Counsel for Francesco G. Policaro
<b>AND TO:</b>	<b>JWZ HOLDINGS, LLC</b> 225 15 <sup>th</sup> Street Manhattan Beach, California, 90266  <b>John W. Ziegler</b> jz@solfiregroup.com  Representative for 483 Driggs Avenue Inc.

<b>AND TO:</b>	<b>PROACTIVE INVESTORS NORTH AMERICA</b> 750 West Pender Street, Unit 401 Vancouver, British Columbia, V6C 2T7  accounts@proactiveinvestors.com
<b>AND TO:</b>	<b>PAUL CRATH</b> 20 Scrivener Square, Apt 810 Toronto, Ontario, M4W 3X9  paulcrath@gmail.com
<b>AND TO:</b>	<b>GRAHAM SIMMONDS</b> 134 Kitzbuhl Cres Blue Mountains, Ontario, L9Y 0S5  jgrahamsimmonds@gmail.com
<b>AND TO:</b>	<b>SEAN CONACHER</b>  sconacher@gmail.com
<b>AND TO:</b>	<b>MICHAEL JOHNSTON</b>  mike@fa.ca
<b>AND TO:</b>	<b>NAEEM HUKKAWALA</b>  Naeem.hukk@gmail.com
<b>AND TO:</b>	<b>MINISTRY OF FINANCE</b> Ministry of the Attorney General Collections Branch – Bankruptcy and Insolvency Unit 6-33 King St West Oshawa, Ontario, L1H 8H5  insolvency.unit@ontario.ca Tel: 1 866 668-8297

<b>AND TO:</b>	<b>ATTORNEY GENERAL OF CANADA</b> Per: Diane Winters, General Counsel Department of Justice 120 Adelaide Street West Suite 400 Toronto, Ontario, M5H 1T1  <b>Diane H. A. Winters</b> diane.winters@justice.gc.ca Tel: 647.256.7459 Fax: 416.973.0810
<b>AND TO:</b>	<b>CHAITONS LLP</b> 5000 Yonge Street, 10 <sup>th</sup> Floor Toronto, Ontario, M2N 7E9  <b>Maya Poliak</b> maya@chaitons.com Tel: 416.218.1161  Counsel for Ontario Securities Commission

**EMAIL SERVICE LIST**

lellis@millerthomson.com; pcorney@millerthomson.com; jwreid@millerthomson.com;  
mmanchanda@spergel.ca; PGennis@spergel.ca; clifton.prophet@gowlingwlg.com;  
heather.fisher@gowlingwlg.com; Goeusl@aol.com; kelly.osaka@dentons.com;  
mcristalli@clarkhill.com; wschuller@clarkhill.com; mmercier@cassels.com;  
jz@solfiregroup.com; accounts@proactiveinvestors.com; paulcrath@gmail.com;  
jgrahamsimmonds@gmail.com; sconacher@gmail.com; mike@fa.ca; Naeem.hukk@gmail.com;  
insolvency.unit@ontario.ca; diane.winters@justice.gc.ca; maya@chaitons.com

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

**INDEX**

<b>Tab</b>	<b>Description</b>
<b>1</b>	Notice of Motion, returnable May 11, 2023
<b>2</b>	Affidavit of Paul Crath sworn May 8, 2023
<b>Exhibit</b>	
<b>A</b>	Affidavit of Paul Crath sworn April 28, 2023 (Without Exhibits)
<b>B</b>	Policy 2 of the Canadian Securities Exchange – Qualifications for Listing
<b>C</b>	Mike Johnston dismissal letter dated May 4, 2023
<b>D</b>	Email from Mike Johnston to Paul Crath dated April 27, 2023
<b>E</b>	Ontario Securities Commissions proposed changes to the Amended and Restated Initial Order
<b>F</b>	Federal Corporate Profile Report of Plant-Based Investment Corp.
<b>3</b>	Draft Amended and Restated Initial Order
<b>4</b>	Blackline of draft Amended and Restated Initial Order to Initial Order
<b>5</b>	Blackline of draft Amended and Restated Initial Order to Model Order

# TAB 1

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

**NOTICE OF MOTION  
(Re: Comeback Hearing)  
(Returnable May 11, 2023)**

The Applicant, Plant-Based Investment Corp. (the “**Applicant**”), will make a motion to the Court, on May 11, 2023 at 9:30 am or as soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1(1) because it is
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

Zoom link to be uploaded on Caselines.



**THE MOTION IS FOR:**

1. An Amended and Restated Initial Order (“**ARIO**”), substantially in the form attached at **Tab “3”** to the Applicant’s Motion Record, among other things:

- (a) abridging the time for and validating service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
- (b) extending the stay of proceedings granted pursuant to the Initial Order (defined below) granted on May 1, 2023 to June 9, 2023 (the “**Extended Stay Period**”);
- (c) increasing the amount of the Priority Charges (as defined below), as follows:
  - (i) increasing the Administration Charge (as defined in the Initial Order) from \$100,000 to \$250,000; and
  - (ii) increasing the DIP Lender’s Charge (as defined in the Initial Order) from \$200,000 to \$500,000;
- (d) permitting the Applicant to sell non-material assets up to \$100,000 in any one transaction and \$200,000 in the aggregate;
- (e) authorizing PBIC to cease incurring further expenses in relation to the Securities Filings (as defined in the ARIO) and declaring that none of the directors, officers, employees, and other representatives of PBIC, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by PBIC to make the Securities Filings; and

2. Such further and other relief as counsel may advise, and as this Court may deem just.
3. Capitalized terms not otherwise defined herein have the meanings prescribed to them in the ARIO.

**THE GROUNDS FOR THE MOTION ARE:**

**Background to the Applicant**

4. The Applicant is a public corporation incorporated under the *Canada Business Corporations Act* and listed on the Canadian Securities Exchange (the “**Exchange**”) under the symbol “PBIC”. Its head office is located in Toronto, Ontario;
5. PBIC is an “investment company” as defined under Policy 2 of the Exchange;
6. PBIC invests in public and private companies that derive a portion of their revenues, earnings or intellectual property-based value from products, equipment, services and/or technologies related to plant-based industries, including the cannabis plant family and its various compounds, the fungi industry (including medicinal, functional and psychedelics), super-foods and/or organic ingredients industries in addition to investing in specialty retail locations, functional medicine and wellness-based clinics and treatment centers (the “**Plant-Based Industry**”);
7. PBIC makes debt and equity investments in the Plant-Based Industry. It makes active and passive investments in public companies, and also invests in private companies;
8. Despite its best efforts, PBIC is insolvent, unable to meet its obligations as they become due, and in need of protection from its creditors;

9. Accordingly, the Applicant brought an application returnable on May 1, 2023 before the Ontario Superior Court of Justice (Commercial List) for the Initial Order and creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c, C-36, as amended (the "CCAA");

### **Initial Order and CCAA Proceedings**

10. On May 1, 2023, the Honourable Justice Conway granted the Initial Order in favour of the Applicant under the CCAA (the "**Initial Order**");

11. Pursuant to the Initial Order, among other things;

- (a) The Applicant is a company to which the CCAA applies;
- (a) msi Spergel Inc. was appointed as monitor of the Applicant in these proceedings ("**Monitor**");
- (b) An initial Stay Period was granted up to May 11, 2023;
- (c) The following super-priority charges against the Property were granted, in the following priority rankings (the "**Priority Charges**"):
  - (i) First – Administration Charge; and
  - (ii) Second – DIP Lenders' Charge; and
- (d) The Applicant was authorized to carry on business in a manner consistent with the preservation of its Property, the proposed restructuring, and to make certain payments in connection with its business;

## ARIO

12. At the within motion, the Applicant is seeking approval of the proposed ARIO, which grants the following relief, among other things:

### *Extended Stay Period*

- (a) An extension of the Stay Period until June 9, 2023;
- (b) The proposed Extended Stay Period expires at the end of the 4-week cash flow forecast prepared by the Monitor and filed in support of the ARIO (“**Updated Cash Flow Forecast**”);
- (c) The Applicant has been working in good faith and with due diligence during the initial Stay Period and will continue to do so during the Extended Stay Period, if granted;
- (d) The proposed Extended Stay Period is reasonable in light of the Updated Cash Flow Forecast, and will provide the Applicant with a sufficient amount of time and the breathing room necessary to finalize a sale and investment solicitation process (“**SISP**”);
- (e) As a result of the potential value represented by the Applicant’s investment company status and by existing tax attributes in the company, the Applicant is taking care to design a SISP that maximizes the value of these sources of recovery; and

- (f) The Applicant has booked time with the Court on May 26, 2023, to seek approval of the SISP;

*Increase in Priority Charges*

- (g) The Applicant seeks to increase the Administration Charge from \$100,000 to \$250,000 to reflect the additional work to be undertaken during these CCAA Proceedings and more accurately reflect projected monthly professional fees;
- (h) The professionals covered by the Administration Charge will play a critical role in assisting the Applicant with the SISP and the progression of these CCAA proceedings, and the quantum of the increased Administration Charge is in line with the nature and size of the Applicants' business and has been approved by the Monitor;
- (i) The Applicant seeks to increase the DIP Lenders' Charge from \$200,000 to \$500,000;
- (j) This increased DIP Lender's Charge reflects the full Second Advance (\$300,000) under the DIP Loan, which is necessary to fund: working capital (including the funding of certain investee company expenses, as described in the First Report) in accordance with the Updated Cash Flow Forecast; professional fees and expenses, including expenses related to the preparation and implementation of, and motion for Court approval of, the SISP; and such other costs and expenses as may be agreed to by the DIP Lender;

*Relief from Reporting Obligations*

- (k) The Applicant seeks authorization to dispense with certain Securities Filing requirements. In particular, the Applicant seeks authorization for it to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases or any other actions that may be required;
- (l) Incurring the time and costs associated with preparing the Securities Filings would detract from PBIC's successful restructuring by unnecessarily diverting important and limited financial and non-financial resources;
- (m) The operative paragraphs of the proposed ARIO were drafted with the input of the Ontario Securities Commission;

*Sale of Non-Material Assets*

- (n) The Applicant seeks the ability to sell non-material assets in the amount of \$100,000 in any one transaction and \$200,000 in the aggregate;
- (o) The Applicant intends to sell its liquid investments to supplement the DIP Loan financing;
- (p) The value of these investments will not be increased by a SISP and it is in the best interests of stakeholders to monetize them now;
- (q) Such non-material asset sales are already contemplated and included in the Court's Model Order; and

- (f) Monitor approves of the proposed limits on non-material asset dispositions;

**General**

- 13. The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;
- 14. Rules 1.04, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- 15. Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- 16. Such further and other grounds as counsel may advise.

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

- (a) The Affidavit of Paul Crath sworn April 28, 2023 and the exhibits attached thereto;
- (b) The Affidavit of Paul Crath sworn May 8 2023, and the exhibits attached thereto;
- (c) The First Report of the Monitor, to be filed; and
- (d) such further and other evidence as counsel may advise and this Court may permit.

May 8, 2023

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

**Larry Ellis LSO# 49313K**  
[lellis@millerthomson.com](mailto:lellis@millerthomson.com)  
Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**  
[pcorney@millerthomson.com](mailto:pcorney@millerthomson.com)  
Tel: 416.595.8555

**James W. Reid LSA#: 18109**  
[jwreid@millerthomson.com](mailto:jwreid@millerthomson.com)  
Tel: 403.298.2418

Lawyers for the Applicant

**TO THE SERVICE LIST**



**SERVICE LIST**

<b>TO:</b>	<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, Ontario, M5H 3S1</p> <p><b>Larry Ellis</b> lellis@millerthomson.com Tel: 416.595.8639</p> <p><b>Patrick Corney</b> pcorney@millerthomson.com Tel: 416.595.8555</p> <p><b>James W. Reid</b> jwreid@millerthomson.com Tel: 403.298.2418</p> <p>Counsel for the Applicant</p>
<b>AND TO:</b>	<p><b>msi Spergel inc.</b> 200 Yorkland Blvd., Suite 1100 Toronto, Ontario, M2J 5C1</p> <p><b>Mukul Manchanda</b> mmanchanda@spergel.ca Tel: 416.498.4314</p> <p><b>Philip Gennis</b> PGennis@spergel.ca Tel: 416.498.4325</p> <p>Monitor</p>
<b>AND TO:</b>	<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario, M5X 1G5</p> <p><b>Clifton P. Prophet</b> clifton.prophet@gowlingwlg.com Tel: 416.862.3509</p> <p><b>Heather Fisher</b> heather.fisher@gowlingwlg.com Tel: 416.369.7202</p>

	Counsel for the Monitor
<b>AND TO:</b>	<b>CRAIG 26 DEVELOPMENTS INC.</b>  Goeusl@aol.com
<b>AND TO:</b>	<b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto, Ontario, M5K 0A1  <b>Kelly Osaka</b> kelly.osaka@dentons.com Tel: 403.268.3017  Counsel for CanadaBis Capital Inc.
<b>AND TO:</b>	<b>CLARK HILL LLC</b> 3800 Howard Hughes Parkway, Suite 500 Las Vegas, Nevada, 89169  <b>Michael V Cristalli, Esq.</b> mcristalli@clarkhill.com Tel: 702.862.8300  <b>William D. Schuller, Esq.</b> wschuller@clarkhill.com Tel: 702.862.8300  Counsel for Jamie L. Pearson
<b>AND TO:</b>	<b>CASSELS BROCK &amp; BLACKWELL LLP</b> Suite 2100, Scotia Plaza, 40 King Street West Toronto, Ontario, M5H 3C2  <b>Marc Mercier</b> mmercier@cassels.com Tel: 416.869.5770  Counsel for Francesco G. Policaro
<b>AND TO:</b>	<b>JWZ HOLDINGS, LLC</b> 225 15 <sup>th</sup> Street Manhattan Beach, California, 90266  <b>John W. Ziegler</b> jz@solfiregroup.com  Representative for 483 Driggs Avenue Inc.

<b>AND TO:</b>	<b>PROACTIVE INVESTORS NORTH AMERICA</b> 750 West Pender Street, Unit 401 Vancouver, British Columbia, V6C 2T7  accounts@proactiveinvestors.com
<b>AND TO:</b>	<b>PAUL CRATH</b> 20 Scrivener Square, Apt 810 Toronto, Ontario, M4W 3X9  paulcrath@gmail.com
<b>AND TO:</b>	<b>GRAHAM SIMMONDS</b> 134 Kitzbuhl Cres Blue Mountains, Ontario, L9Y 0S5  jgrahamsimmonds@gmail.com
<b>AND TO:</b>	<b>SEAN CONACHER</b>  sconacher@gmail.com
<b>AND TO:</b>	<b>MICHAEL JOHNSTON</b>  mike@fa.ca
<b>AND TO:</b>	<b>NAEEM HUKKAWALA</b>  Naeem.hukk@gmail.com
<b>AND TO:</b>	<b>MINISTRY OF FINANCE</b> Ministry of the Attorney General Collections Branch – Bankruptcy and Insolvency Unit 6-33 King St West Oshawa, Ontario, L1H 8H5  insolvency.unit@ontario.ca Tel: 1 866 668-8297

<b>AND TO:</b>	<b>ATTORNEY GENERAL OF CANADA</b> Per: Diane Winters, General Counsel Department of Justice 120 Adelaide Street West Suite 400 Toronto, Ontario, M5H 1T1  <b>Diane H. A. Winters</b> diane.winters@justice.gc.ca Tel: 647.256.7459 Fax: 416.973.0810
<b>AND TO:</b>	<b>CHAITONS LLP</b> 5000 Yonge Street, 10 <sup>th</sup> Floor Toronto, Ontario, M2N 7E9  <b>Maya Poliak</b> maya@chaitons.com Tel: 416.218.1161  Counsel for Ontario Securities Commission

**EMAIL SERVICE LIST**

lellis@millerthomson.com; pcorney@millerthomson.com; jwreid@millerthomson.com;  
mmanchanda@spergel.ca; PGennis@spergel.ca; clifton.prophet@gowlingwlg.com;  
heather.fisher@gowlingwlg.com; Goeusl@aol.com; kelly.osaka@dentons.com;  
mcristalli@clarkhill.com; wschuller@clarkhill.com; mmercier@cassels.com;  
jz@solfiregroup.com; accounts@proactiveinvestors.com; paulcrath@gmail.com;  
jgrahamsimmonds@gmail.com; sconacher@gmail.com; mike@fa.ca; Naeem.hukk@gmail.com;  
insolvency.unit@ontario.ca; diane.winters@justice.gc.ca; maya@chaitons.com

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

Court File No CV-23-00698826-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(RE COMEBACK HEARING)  
(RETURNABLE MAY 11, 2023)**

**MILLER THOMSON LLP**

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

**Larry Ellis LSO# 49313K**

[lellis@millერთhompson.com](mailto:lellis@millერთhompson.com)

Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**

[pcorney@millერთhompson.com](mailto:pcorney@millერთhompson.com)

Tel: 416.595.8555

**James W. Reid LSA#: 18109**

[jwreid@millერთhompson.com](mailto:jwreid@millერთhompson.com)

Tel: 403.298.2418

Lawyers for the Applicant

# TAB 2

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

**AFFIDAVIT OF PAUL CRATH  
(SWORN MAY 8, 2023)**

I, **PAUL CRATH**, of the City of Brooklyn, in the State of New York, MAKE OATH  
AND SAY AS FOLLOWS:

1. I have been the Chief Executive Officer, Vice President Corporate Development, and General Counsel of Plant-Based Investment Corp. (“**PBIC**” or the “**Applicant**”), since November 26, 2020. As such, I have personal knowledge of the matters to which I herein depose. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. I swear this Affidavit in my capacity as CEO and not General Counsel and do not waive privilege by any statement herein.

2. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

**A. Introduction and Relief Requested**

3. On April 28, 2023, I swore an affidavit in this CCAA proceeding (“**First Crath Affidavit**”). Attached hereto as **Exhibit “A”** is a copy of the First Crath Affidavit, without

exhibits. This affidavit is supplemental to and should be read in conjunction with the First Crath Affidavit.

4. This affidavit is sworn in support of a motion by the Applicant pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended ("CCAA"), requesting:

- (a) An amended and restated initial order, ("**ARIO**") substantially in the form attached at Tab 3 of the Applicant's motion record<sup>1</sup>, among other things:
  - (i) abridging the time for and validating service of this notice of motion and the Motion Record and dispensing with service on any person other than those served;
  - (ii) extending the stay of proceedings granted pursuant to the Initial Order (defined below) granted on May 1, 2023 to June 9, 2023 (the "**Extended Stay Period**");
  - (iii) increasing the amount of the Priority Charges (as defined below), as follows:
    - (A) increasing the Administration Charge (as defined in the Initial Order) from \$100,000 to \$250,000; and
    - (B) increasing the DIP Lender's Charge (as defined in the Initial Order) from \$200,000 to \$500,000;
  - (iv) permitting the Applicants to sell non-material assets up to \$100,000 in any one transaction and \$200,000 in the aggregate; and

---

<sup>1</sup> A comparison of the Amended and Restated Initial Order to the Initial Order, as amended is attached as **Tab "4"**, and a comparison of the Amended and Restated Initial Order to the Model Order is attached as **Tab "5"**.



- (v) authorizing PBIC to cease incurring further expenses in relation to the Securities Filings (as defined in the ARIO) and declaring that none of the directors, officers, employees, and other representatives of PBIC, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by PBIC to make the Securities Filings, on terms discussed with Ontario Securities Commission (through counsel).

5. The Monitor supports the relief sought at the Comeback Hearing (defined below).

## **B. Background and Status of CCAA Proceedings**

6. PBIC is a public corporation incorporated under the *Canada Business Corporations Act* and listed on the Canadian Securities Exchange (the “**Exchange**”) under the symbol “PBIC”. Its head office is located in Toronto, Ontario.

7. PBIC is an “investment company” as defined under Policy 2 of the Exchange. PBIC's status as an investment company enhances value insofar as it is permitted to raise capital to invest in businesses that are to be identified and this flexibility is attractive to capital market participants. A copy of Policy 2 of the Exchange is attached hereto as **Exhibit “B”**.

8. PBIC invests in public and private companies that derive a portion of their revenues, earnings or intellectual property-based value from products, equipment, services and/or technologies related to plant-based industries, including the cannabis plant family and its various compounds, the fungi industry (including medicinal, functional and psychedelics), super-foods and/or organic ingredients industries in addition to investing in specialty retail locations, functional medicine and wellness-based clinics and treatment centers (the “**Plant-Based Industry**”).

9. PBIC makes debt and equity investments in the Plant-Based Industry. It makes active and passive investments in public companies, and also invests in private companies.

10. The Applicant applied for urgent relief under the CCAA on May 1, 2023 because it had insufficient funds to sustain operations after that date and appeared before the Honourable Madam Justice Conway. By Order of Justice Conway, dated May 1, 2023 (the “**Initial Order**”), among other things, a stay of proceedings was granted for ten days (“**Initial Stay Period**”), with a return date set for May 11, 2023 (“**Comeback Hearing**”) to address the relief sought on this motion.

11. Pursuant to the Initial Order, among other things:

- (a) The Applicant is a company to which the CCAA applies;
- (b) msi Spergel Inc. was appointed as monitor of the Applicant in these proceedings (“**Monitor**”);
- (c) An Initial Stay Period was granted up to May 11, 2023;
- (d) The following charges against the Property were granted, in the following priority rankings (the “**Priority Charges**”):
  - (i) First – Administration Charge; and
  - (ii) Second – DIP Lenders’ Charge; and
- (e) The Applicant is authorized to carry on business in a manner consistent with the preservation of its Property, the restructuring proposed, and to make certain payments in connection with its business.

12. A copy of the Initial Order is available on the Monitor’s website at <https://www.spergelcorporate.ca/engagements/plant-based-investment-corp/>.

13. Since the Initial Order was granted, the Applicant has, with the assistance of its legal counsel and the Monitor, among other things:

- (a) drafted and distributed a press release to advise stakeholders of the CCAA proceeding;
- (b) communicated with counsel to the Ontario Securities Commission, regarding the proposed “relief from reporting obligations” language found at paragraphs 42 and 43 of the proposed ARIO;
- (c) published a notice of CCAA proceedings in the Globe & Mail;
- (d) communicated with landlords, key stakeholders and investors;
- (e) begun developing a sale and investment solicitation process (“**SISP**”);
- (f) considered PBIC’s ability to maintain its status as an investment company following CCAA exit;
- (g) responded to inquiries from third parties who have expressed interest in participating in a SISP; and
- (h) met with the Monitor to discuss, identify, and realize cash flow efficiencies, and assisted the Monitor in its preparation of a weekly cash flow forecast (the “**Updated Cash Flow Forecast**”) for the Extended Stay Period.

14. Late on May 4, 2023, I received a letter from Mike Johnston, at that time the Applicant’s Chief Financial Officer and a member of its board of directors (the “**Board**”). In that letter, Mr. Johnston asserted that, among other things, he had been constructively dismissed, was resigning as corporate secretary and a Director, “effective immediately”, and asserted a claim of approximately \$350,000 for unpaid wages and purported contractual termination entitlements. A copy of Mr. Johnston’s letter is attached hereto as **Exhibit “C”**.

15. In his letter, Mr. Johnston states that I failed to put before the Court an email from him dated April 27, 2023, (3:34 p.m.). A copy of this email is attached hereto as **Exhibit “D”**.

**C. Relief Sought at Comeback Hearing**

**(i) Extension of Stay Proceedings**

16. The proposed Extended Stay Period expires on June 9, 2023, at the end of four-week Updated Cash Flow Forecast, which will be appended to the Monitor’s first report to the Court. Prior to the expiry of the Extended Stay Period, the Applicant intends to return to Court for approval of the SISP and has booked time on May 26, 2023 for that purpose.

17. The Updated Cash Flow Forecast demonstrates liquidity sufficient for the Applicant to continue operations through the Extended Stay Period. However, the Applicant will require additional DIP Loan funding to run a SISP. The Applicant is accordingly in active discussions with the DIP Lender to increase the DIP Loan, the quantum of which increase will be determined concomitantly with the structure of the SISP.

18. The Applicant has acted, and continues to act, in good faith and with due diligence to communicate with stakeholders and to develop a SISP. The Applicant has been, with the assistance of its legal counsel and the Monitor and its counsel, considering various structures and timelines for the SISP, with the goal of crafting the best process to maximize stakeholder value.

19. The proposed Extended Stay Period is reasonable in light of the Updated Cash Flow Forecast, and will provide the Applicant with a sufficient amount of time and the breathing room necessary to finalize the SISP, including to hold discussions with relevant regulators regarding how PBIC can maintain its investment company status following its emergence from CCAA

protection. As a result of the potential value represented by the Applicant's investment company status and by existing tax attributes in the company, the Applicant is taking care to design a SISP that maximizes the value of these sources of recovery.

20. I do not believe that any creditor will suffer material prejudice as a result of the extension of the stay of proceedings for the Extended Stay Period.

**(ii) Increase in Priority Charges**

21. The Priority Charges in the Initial Order were limited to those amounts reasonably necessary for the Applicant's ordinary course operations during the Initial Stay Period. The Applicant now seeks to increase the Priority Charges to the amounts reasonably necessary to operate during the Extended Stay Period.

22. The Applicant seeks to increase the Administration Charge from \$100,000 to \$250,000 to reflect the additional work to be undertaken during these CCAA proceedings and more accurately reflect projected monthly professional fees.

23. As noted above, following granting of the Initial Order, I begun exploring the possibility of the Applicant maintaining its investment corporation status with the Exchange, post-CCAA exit; if this is possible, significant stakeholder value could be realized. However, to pursue this possibility, the Applicant will require securities law advice and incur related legal fees that were not contemplated at the time that the Initial Order was granted. The Applicant therefore seeks to the Administration Charge from \$100,000 to \$250,000. I believe this increase is necessary and reasonable in light of the potential stakeholder value that could be unlocked.

24. The Applicant seeks to increase the DIP Lenders' Charge from \$200,000 to \$500,000. This increase reflects the full Second Advance (\$300,000) under the DIP Loan, which is necessary to fund: working capital, in accordance with the Updated Cash Flow Forecast; professional fees and expenses, including expenses related to the preparation and implementation of, and motion for Court approval of the SISP; and such other costs and expenses as may be agreed to by the DIP Lender.

25. A copy of the DIP Term Sheet is attached as Exhibit "Q" to my First Affidavit. Based on the Updated Cash Flow Forecast, I believe the Second Advance under the DIP Loan is necessary for the Applicant to devise and implement a SISP to maximize recoveries for its creditors.

**(iii) Relief from Reporting Obligations**

26. PBIC seeks authorization to dispense with certain Securities Filing requirements. In particular, PBIC seeks authorization for PBIC to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions that may be required.

27. Incurring the time and costs associated with preparing the Securities Filings would detract from PBIC's successful restructuring by unnecessarily diverting important and limited financial and non-financial resources.

28. Nothing in the operative paragraphs of the draft ARIO prohibits any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA.

29. I am advised by PBIC's counsel, Patrick Corney of Miller Thomson LLP, that on May 2, 2023, he and counsel for the Monitor spoke to external counsel for the OSC regarding the proposed relief from reporting obligations language in the draft ARIO.

30. On May 5, 2023, counsel for the OSC responded with minor comments on the operative paragraphs, which are reflected in the form of ARIO included in the Motion Record at Tab 3 and a request for certain endorsement language concerning these operative paragraphs if acceptable to the Court. A copy of a redline excerpt reflecting the OSC's proposed changes is attached hereto as **Exhibit "E"**.

**(iv) Inclusion of Model Order Restructuring Provisions**

31. The Applicant seeks to include in the ARIO the model initial order provisions (i) permitting it to dispose of redundant or non-material assets; (ii) dealing with the removal of fixtures; and (iii) permitting landlords to show affected leased premises following a notice of disclaimer issued under Section 32 of the CCAA.

32. The Applicant desires the ability to dispose of \$100,000 of redundant or non material assets in one transaction and \$200,000 in the aggregate. The Applicant intends to sell its liquid investments to supplement the DIP Loan financing. In my view, the value of these investments will not be increased by a SISP and therefore it is in the best interests of stakeholders to monetize them now. The ability to monetize non-material assets will ensure the Applicant can reasonably maximize its cash flow without expending limited resources on Court approval.

33. Further, I believe that the inclusion of the model initial order provisions concerning landlord-tenant relationships is prudent and will avoid a return to Court on a later date, should

they become necessary. As described in the First Crath Affidavit, the Applicant is, in respect of the Leased Premises as defined under the Highway 26 Lease described in the First Crath Affidavit, both a tenant and a 26.6% owner of the landlord.

**(v) Correction to First Affidavit**

34. At paragraph 19 of my First Affidavit, I stated that a copy of PBIC’s federal corporate profile report was attached thereto as Exhibit “B”. After I swore my First Affidavit, I discovered that the wrong corporate profile report was attached (it was the profile report for PBIC’s former investment manager). A copy of PBIC’s federal corporate profile report is attached hereto as **Exhibit “F”**.

**D. Conclusion**

35. I swear this affidavit in support of a Motion under the CCAA for an Order in the form contained at Tab 3 of the Motion Record, and for no other purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 8<sup>th</sup> day of May 2023, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely.

*patrick corney*

\_\_\_\_\_  
Commissioner for Taking Affidavits



\_\_\_\_\_  
PAUL CRATH



This is Exhibit "A" referred to  
in the Affidavit of Paul Crath  
sworn May 8, 2023

*patrick corvey*

---

A Commissioner for Oaths in and  
for the Province of Ontario

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PLANT-  
BASED INVESTMENT CORP. (the "**Applicant**")

**AFFIDAVIT OF PAUL CRATH  
(Sworn APRIL 28, 2023)**

**MILLER THOMSON LLP**  
40 King Street West  
Suite 5800  
Toronto Ontario  
M5H 3S1, Canada

**Larry Ellis LSO#: 49313K**  
[lellis@millerthomson.com](mailto:lellis@millerthomson.com)  
Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**  
[pcorney@millerthomson.com](mailto:pcorney@millerthomson.com)  
Tel: 416.595.8555

**James W. Reid LSA#: 18109**  
[jwreid@millerthomson.com](mailto:jwreid@millerthomson.com)  
Tel: 403.298.2418

**Lawyers for the Applicant**

## CONTENTS

	Page
PART I - INTRODUCTION .....	4
A. Background & Overview of the Proposed Proceeding .....	4
B. Relief Sought .....	7
PART II - CORPORATE STRUCTURE AND BUSINESS .....	9
A. PBIC .....	9
B. Corporate Structure .....	11
C. PBIC's Directors & Officers .....	12
D. Employees .....	17
E. Banking & Cash Management .....	17
PART III - BUSINESS & OPERATIONS .....	17
A. PBIC's Investment Portfolio .....	17
B. Lease .....	18
PART IV - FINANCIAL STATUS .....	19
A. July 31, 2022 Unaudited Condensed Interim Consolidated Financial Statements .....	19
B. Increase in Liabilities Since July 31, 2022 .....	21
C. Secured Indebtedness .....	22
PART V - CAUSES OF CURRENT FINANCIAL CHALLENGES .....	22
A. Market Challenges and PBIC's Response .....	22
PART VI - NEED FOR CCAA PROTECTION .....	24
A. Eligibility .....	24
B. Funding of the CCAA Proceedings .....	25
PART VII - CASH FLOW FORECAST .....	26
A. Cash Flow Forecast .....	26
PART VIII - PROPOSED INITIAL ORDER .....	27
A. The Stay of Proceedings in Favour of PBIC .....	27
B. Initial Administration Charge .....	27
C. DIP Lender's Charge .....	28
D. Cash Management System .....	28
E. Securities Filings .....	29
PART IX - INTENTION TO SEEK SECOND ORDER .....	29
PART X - THE PROPOSED MONITOR .....	30
PART XI - CONCLUSION .....	30

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP. (the "Applicant")**

**AFFIDAVIT OF PAUL CRATH  
(Sworn APRIL 28, 2023)**

**I, PAUL CRATH**, of the City of Brooklyn, in the State of New York, **MAKE OATH  
AND SAY AS FOLLOWS:**

1. I have been the Chief Executive Officer, Vice President Corporate Development, and General Counsel of Plant-Based Investment Corp. ("**PBIC**" or the "**Applicant**"), since November 26, 2020. As such, I have personal knowledge of the matters to which I herein depose. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. I swear this Affidavit in my capacity as CEO and not General Counsel and do not waiver privilege by any statement herein.

2. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

## **PART I - INTRODUCTION**

### **A. Background & Overview of the Proposed Proceeding**

3. PBIC is a publicly listed corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44 (the “**CBCA**”) that is listed on the Canadian Securities Exchange (the “**Exchange**”) under the symbol “PBIC”. PBIC is currently subject to a cease trade order as further described in Paragraph 11 below.

4. PBIC is an investment corporation that invests in public and private companies that derive revenues, earnings, or intellectual property-based value from products, equipment, services, and/or technologies related to plant-based industries, including the cannabis plant family and its various compounds, the fungi industry (including medicinal, functional and psychedelics), super-foods, and/or organic ingredients industries, in addition to investing in specialty retail locations, functional medicine, and wellness-based clinics and treatment centers (collectively, the “**Plant-Based Industry**”).

5. PBIC invests in both debt and equity. PBIC directly holds certain investments, while others are made through wholly-owned direct or indirect subsidiaries that are not subject to this proceeding.

6. PBIC’s income is generated from its investments in the Plant-Based Industry, primarily in the form of dividends, interest payments, and gains on its investments.

7. PBIC has no funded debt. Its liabilities, which exceed \$5,000,000, are materially comprised of accounts payable and contingent litigation claims.

8. PBIC's financial position has suffered from the downturn in the market for Plant-Based Industry securities. From and including its 2019 fiscal year, PBIC has operated at a net loss. Over the past four years, PBIC has lost over \$25,000,000 in total asset value: from \$39,805,931 at the end of its 2019 fiscal year to \$14,744,220 as at July 31, 2022 (and very likely even lower as of today). Further, PBIC is effectively out of cash.

9. PBIC can no longer financially support its investments. As such, the majority of my tenure as CEO has been devoted to finding a strategic partner, and monetizing short term assets to fund ongoing operations and support primary investments; over the past 18 months, approximately 80% of my time as CEO has been dedicated to these tasks. Without a strategic partner, PBIC is not a viable business.

10. In early 2023, it became clear that PBIC would not have cash sufficient to complete its audited consolidated financial statements and related management discussion and analysis for its fiscal year ending October 31, 2022 (the "**2022 Financial Statements**"). Therefore, on or around February 14, 2023, PBIC applied for a management cease trade order ("**MCTO**") from the Ontario Securities Commission (the "**OSC**").

11. The MCTO was not granted and PBIC failed to make a timely filing of its 2022 Financial Statements. On or around March 6, 2023, the OSC issued a "failure to file" cease trade order ("**CTO**") against it, which ordered that general trading, whether direct or indirect, of PBIC's securities cease. A copy of the CTO is attached hereto as **Exhibit "A"**. Until the CTO is revoked, PBIC cannot raise equity financing.

12. In late March 2023, I believed that I had secured a short-term solution to PBIC’s cash flow issued by way of a \$500,000 secured loan (the “**March Loan Agreement**”) from an arms-length, third party lender, 1000492681 Ontario Inc. (the “**Lender**”). The March Loan Agreement would have allowed PBIC to, among other things, advance its 2022 Financial Statements, which are critical to revoking the CTO to resume trading on the Exchange, and continue its efforts to find a long-term strategic partner.

13. The March Loan Agreement was executed in late March 2023, and funded on or around April 3, 2023. Following funding, two of the then members of PBIC’s board of directors (the “**Board**”) refused to attend an emergency Board meeting to approve the March Loan Agreement. However, these dissenting then Board members offered no alternative solutions. The March Loan Agreement funds were never used by PBIC and returned to the Lender on or around April 24, 2023.

14. Without the funds from the March Loan Agreement, PBIC is unable to meet its obligations as they come due, including paying legal fees to defend against material ongoing litigation, advancing its 2022 Financial Statements to revoke the CTO to resume trading on the Exchange, and continuing to operate. As a result, PBIC is left with no choice but to file for protection from its creditors to protect the remaining value in certain of PBIC’s long-term, illiquid assets.

15. To finance these proceedings and the continued operations of PBIC, the Lender is willing to provide the previously offered \$500,000 loan as debtor-in-possession financing in these proceedings (the “**DIP Loan**”).

16. PBIC, with the assistance of its professional advisors, has determined that a CCAA filing is the prudent and responsible course of action. CCAA protection will provide PBIC with the breathing space necessary for one final attempt to find a strategic partner, while at the same time monetizing liquid assets for the benefit of all creditors. If the proposed Initial Order is granted, PBIC will immediately begin to focus on the development of a sale and investment solicitation process (“**SISP**”). However, given that no strategic partner has yet been found despite my efforts over the past 18 months, I expect that an orderly wind-down will be the likely outcome of this proceeding.

17. If the proposed Initial Order is not granted, it is likely that PBIC will make an assignment into bankruptcy and material value in its long-term assets will be lost to the detriment of stakeholders.

## **B. Relief Sought**

18. For the reasons set out in this Affidavit, I believe that PBIC ought to be granted protection under the CCAA. Accordingly, this Affidavit is sworn in support of an application (the “**Application**”) for an Initial Order substantially in the form attached at Tab 4 of the Application Record herein, granting PBIC protection from its creditors and certain ancillary relief including, among other things:

- (a) abridging the time for service of the Notice of Application and dispensing with service on any person other than those served;
- (b) declaring that PBIC is a company to which the CCAA applies;



- (c) appointing msi Spergel Inc. (“**Spergel**”) as monitor of PBIC in these proceedings (the “**Proposed Monitor**” and, if appointed, the “**Monitor**”);
- (d) granting an initial stay of proceedings to May 11, 2023 (the “**Stay Period**”);
- (e) authorizing PBIC to carry on business in a manner consistent with the preservation of its Property (as defined in the proposed Initial Order) and the restructuring proposed, and to make certain payments in connection with their business and the proceedings taken herein;
- (f) granting an initial administration charge in the amount of \$150,000 (the “**Initial Administration Charge**”) in favour of counsel for PBIC, and the Monitor and its counsel;
- (g) granting a charge in favour of the Lender in the amount of \$200,000 (“**DIP Lender’s Charge**” and together with the Initial Administration Charge, the “**Priority Charges**”);
- (h) authorizing PBIC to continue utilizing its cash management system (the “**Cash Management System**”); and
- (i) authorizing PBIC to cease incurring further expenses in relation to the Securities Filings (as defined in the Initial Order) and declaring that none of the directors, officers, employees, and other representatives of PBIC, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by PBIC to make the Securities Filings.

## PART II - CORPORATE STRUCTURE AND BUSINESS

### A. PBIC

19. PBIC was incorporated pursuant to the CBCA on October 19, 2017, under the name “Cannabis Growth Opportunity Corporation”, with its head and registered office located in Toronto, Ontario. On January 15, 2021, Cannabis Growth Opportunity Corporation changed its name to Plant-Based Investment Corp. Attached hereto as **Exhibit “B”** is a copy of the federal corporate profile report dated April 24, 2023 in respect of PBIC.

20. As of the date of writing, PBIC has 27,502,894 common shares issued and outstanding. Using the share price at the date of the CTO (March 6, 2023), \$0.05 per share, PBIC’s market capitalization is approximately \$1,375,145.

21. PBIC is an investment corporation that invests in the Plant-Based Industry through securities and other contractual rights. In particular, PBIC invests in the following categories of companies operating in, investing in, or otherwise deriving a portion of their earnings from the Plant Based Industry:

- (a) public companies for which PBIC does not receive rights to elect one or more directors and does not become actively involved in (the “**Passive Public Portfolio**”)
- (b) public companies for which PBIC receives rights to elect one or more directors or otherwise becomes actively involved in (the “**Active Public Portfolio**” and, together with the Passive Public Portfolio, the “**Public Portfolio**”); and

- (c) private companies (the “**Private Portfolio**”).

*Management of the Investment Portfolio*

22. The Active Public Portfolio and the Private Portfolio are managed by PBIC.
23. StoneCastle Investment Management Inc. (the “**StoneCastle**”) formerly acted as the Corporation’s investment manager regarding the Passive Public Portfolio. StoneCastle resigned on or around September 16, 2022. Since the StoneCastle’s resignation, a majority of the Passive Public Portfolio has been transferred to an investment advisor at Canaccord Genuity Corp. to act in a similar capacity as StoneCastle.

*Management of PBIC’s Business*

24. Prior to May 12, 2022, CGOC Management Corp. (the “**Manager**”) acted as manager and promoter of PBIC and provided management services to PBIC, including making all decisions regarding PBIC’s business, pursuant to a management agreement.
25. On May 12, 2022, PBIC acquired and internalized the Manager through a share purchase agreement dated May 1, 2022 (the “**Manager Share Purchase Agreement**”). PBIC acquired 100% ownership of the Manager by purchasing:
- (a) 50% of the common shares of the Manager directly; and
  - (b) 100% of the common shares of 2163777 Ontario Inc., which held the remaining 50% of the common shares of the Manager (the “**Manager Transaction**”).

A copy of the Manager Share Purchase Agreement is attached hereto as **Exhibit “C”**.

26. The purchase price for the Manager Transaction was settled through the sale, transfer, and assignment by PBIC of an aggregate of 31,650,000 common shares in the capital of Grown Rogue International Inc. (“**Grown Rogue**”), a PBIC investee company. The total consideration for the transaction was valued at \$2,215,000 based on the fair value of the Grown Rogue block of common shares on May 12, 2022. PBIC assumed \$41,737 of the Manager’s liabilities.

**B. Corporate Structure**

27. PBIC directly or indirectly owns a 100% interest in the following corporations:

- (a) PBIC USA Corp. [Nevada];
- (b) PBIC Finance Corp. [Nevada];
- (c) 483 Driggs Avenue Inc. (“**483 Driggs**”) [New York];
- (d) 12750961 Canada Corp.;
- (e) 1000175475 Ontario Inc.;
- (f) 1000175476 Ontario Inc.
- (g) the Manager; and
- (h) 2163777 Ontario Inc.

28. All of these entities are wholly-owned, direct subsidiaries of PBIC, except PBIC Finance Corp., which is a wholly-owned direct subsidiary of PBIC USA Corp.

29. PBIC is a joint venture partner in 13095223 Canada Corp. (d/b/a “**Cali-Brands**”), which is described in greater detail at paragraph 74 below.

30. PBIC directly funds, as necessary, certain expenses of 483 Driggs and Cali-Brands. In particular, PBIC pays (i) rent, utilities, and insurance on behalf of 483 Driggs in respect of an investment lease (the “**483 Driggs Lease**”); and (ii) rent, utilities, and insurance, as well as leasehold improvements, on behalf of Cali-Brands. PBIC funds these obligations because the leases have material underlying value, which value will be eroded or lost if the related obligations are not kept current.

### **C. PBIC’s Directors & Officers**

#### *Directors*

31. As at the date of this Affidavit, the Board is made up of me, Graham Simmonds, and Michael Johnston. Graham Simmonds is the only independent member of the Board.

32. Within the past twelve months, at various times, Ashish Kapoor, Gerald Goldberg, and Sean Conacher were members of the Board.

#### *Ashish Kapoor*

33. Mr. Kapoor was a Director of PBIC from November 26, 2020, until his resignation on February 14, 2023. Mr. Kapoor resigned to focus on other opportunities.

*Gerald Goldberg*

34. Mr. Goldberg was announced as a Director of PBIC on February 14, 2023. Mr. Goldberg was intended to replace Mr. Kapoor. Following his acceptance as Director, Mr. Goldberg discovered that he was in a potential conflict of interest and resigned from the Board on April 21, 2023.

*Sean Conacher*

35. On August 15, 2019, Mr. Conacher became one of the Manager's appointees to the Board. On May 11, 2022, as a condition of the Manager Share Purchase Agreement, Mr. Conacher tendered a signed notice of resignation effective upon satisfaction of certain closing obligations, which closing obligations were satisfied on April 18, 2023.

36. A copy of Mr. Conacher's signed resignation is attached hereto as **Exhibit "D"**.

37. The closing obligations for Mr. Conacher's resignation to become effective were satisfied as follows:

- (a) payment by PBIC of an aggregate of \$24,500 in connection with certain debt settlement agreements in connection with the Manager Share Purchase Agreement;  
and
- (b) Payment by PBIC of outstanding legal fees of the Vendors under the Manager Share Purchase Agreement.

38. These payments were made on April 18, 2023. Mr. Conacher's resignation from the Board was therefore effective in accordance with the terms of his resignation on April 18, 2023.

39. PBIC's corporate filings have not yet been updated to reflect the resignations of Mr. Goldberg and Mr. Conacher.

### *Officers*

40. I am currently the Chief Executive Officer, General Counsel, and Vice President Corporate Development of PBIC. Mr. Johnston is the Chief Financial Officer and Corporate Secretary of PBIC.

41. Mr. Conacher was formerly PBIC's Chief Strategy Officer.

42. On April 14, 2023, Mr. Conacher sent a letter to PBIC claiming that he had been constructively dismissed from his role as Chief Strategy Officer of PBIC citing, among other things, non-payment of his salary since February 2022. A copy of Mr. Conacher's April 14, 2023 letter is attached hereto as **Exhibit "E"**.

43. April 26, 2023 PBIC wrote to Mr. Conacher, acknowledging that he was no longer an officer of PBIC, and confirming that his resignation from the Board was effective April 18, 2023. A copy of PBIC's April 26, 2023, letter is attached hereto as Exhibit **"F"**.

### *Events Leading to The Board Meeting Authorizing This CCAA Filing*

44. On April 25, 2023, Mr. Johnston stated that he and Mr. Conacher wished to call a meeting of the Board for April 27, 2023. A copy of Mr. Johnston's email is attached hereto as **Exhibit "G"**.

45. On April 26, 2023, I sent an email to Mr. Johnston stating, among other things, that I and Mr. Simmonds would attend proposed Board meeting but that Mr. Conacher, who had resigned from the Board, could not attend and could not receive confidential PBIC information.

46. That evening, Mr. Johnston responded “Understood regarding Sean, I will not communicate any confidential PBIC matters or information with Sean. I was not aware of his resignation being effective and would have only communicated information with him that he would have been entitled to as a director.” A copy of my email and Mr. Johnston’s reply is attached hereto as **Exhibit “H”**.

47. On April 27, 2023, at 8:47 a.m. EST, PBIC issued a press release announcing, among other things:

- (a) that Mr. Conacher had resigned as a Director of PBIC, effective April 18, 2023;
- (b) that Mr. Conacher had resigned as Chief Strategy Officer of PBIC, effective April 14, 2023, as a result of alleged constructive dismissal;
- (c) that Mr. Conacher is seeking \$405,000 in unpaid wages and \$750,000 in damages from PBIC; and
- (d) that Mr. Goldberg resigned as a director of PBIC effective April 21, 2023.

A copy of this press release is attached hereto as **Exhibit “I”**.

48. Later that day, Mr. Johnston wrote to me “I am writing to cancel the Board meeting scheduled for today at 1:30pm. I have just received an email sent by Gowlings indicating that



Sean's resignation has not been released from escrow. Until we know who the directors are we can't have a proper Board meeting."

49. I responded:

As per my note yesterday this is a private board communication

To be clear Sean's resignation was a condition of the SPA for CGOC Mgmt Corp and the transaction has closed. We received his resignation at our lawyers at closing subject to certain liabilities being satisfied. They have all been satisfied. Gowlings is not required to release it from Escrow. As noted PBIC has the opinion of two independent law firms that Sean has resigned from the Board effective April 18, 2023 and we have press released to that fact.

Our lawyers have confirmed that the PBIC Board consists of 3 members, you, myself and Graham.

One of the main purposes of this emergency Board meeting is to discuss how we protect ourselves from litigation, including Sean's significant constructive dismissal claim as well as from other looming creditors.

Sean is not on the Board and we do not think it is appropriate for any director to take the position that he is. Please keep these communications confidential.

We will proceed with the meeting at 1:30pm.

A copy of Mr. Johnston's email and my reply is included in **Exhibit "G"**.

50. The Board meeting proceeded as scheduled, and was attended by Graham Simmonds and me, and therefore the necessary quorum existed. PBIC's securities law counsel and insolvency law counsel were also present. Mr. Johnston did not attend. The within CCAA proceeding, and related DIP Loan, was approved by a resolution signed by Mr. Simmonds and me. A copy of the signed Director's resolution is attached hereto as **Exhibit "J"**.

#### **D. Employees**

51. As at April 27, 2023, PBIC has no full time employees, one part-time employee, and three independent contractors. An employee is classified as full time when working equal to or greater than 35 hours per week. An employee is classified as part time when working less than 35 hours per week.

#### **E. Banking & Cash Management**

52. PBIC does not maintain traditional bank accounts. PBIC instead maintains two brokerage accounts and one global payments account, each of which can be used to send and receive funds (together, the “**Cash Management System**”):

- (a) CIBC World Markets Inc. brokerage account (the “**CIBC Brokerage Account**”);
- (b) Canaccord Genuity Corp. brokerage account; and
- (c) Cambridge Mercantile Corp. d/b/a “Corpay” global payments account.

53. The majority of PBIC’s transactions run through the CIBC Brokerage Account.

### **PART III - BUSINESS & OPERATIONS**

#### **A. PBIC’s Investment Portfolio**

54. As at July 31, 2022, PBIC’s investment portfolio was as follows.

<b>Investment Category</b>	<b>Cost</b>	<b>Fair Value</b>	<b>Percentage (Fair Value)</b>
Equities	\$29,007,158	\$9,160,613	78%

Warrants	1,536,713	86,884	1%
Convertible Debentures	4,079,462	1,881,812	16%
Loans	3,073,875	593,224	5%
<b>Total Investments</b>	<b>\$37,697,208</b>	<b>\$11,722,533</b>	<b>100%</b>

<b>Portfolio Allocation</b>	<b>Cost</b>	<b>Fair Value</b>	<b>Percentage (Fair Value)</b>
Active Public	\$11,434,535	\$3,087,664	26%
Passive Public	6,076,321	3,292,928	28%
Private	20,186,352	5,341,941	46%
<b>Total</b>	<b>\$37,697,208</b>	<b>\$11,722,533</b>	<b>100%</b>

55. I believe that based on market movement since July 31, 2022, the value of these investments has declined. The information in the table above was in the process of being updated in the course of preparing PBIC's audited annual financial statements for its 2022 fiscal year, but this exercise has not been completed.

## **B. Lease**

56. PBIC holds a head lease for investment purposes for a building and surrounding appurtenant lands municipally known as 209820 Highway 26 in the Town of Blue Mountains in Ontario (the "**Leased Premises**") pursuant to a lease with Craig 26 Developments Inc. (the "**Landlord**"), commencing December 1, 2022 (the "**Highway 26 Lease**"). The Highway 26 Lease runs until November 30, 2027 and Rent (as defined thereunder) is \$72,000 per year (or \$6,000 per

month). PBIC is currently \$24,000 in arrears under the Highway 26 Lease. PBIC is a co-developer of a planned real estate development project on the Leased Premises for investment purposes (the “**Project**”). A copy of the Highway 26 Lease is attached hereto as **Exhibit “K”**.

57. PBIC holds a 26.66% equity interest in the Landlord. The Landlord has plans to complete the Project on the Leased Premises. PBIC is accordingly responsible for 26.66% of all cash calls and will receive 26.66% of net cash flows from the project. A \$13,332 cash call is currently due and payable by PBIC.

58. PBIC’s lease payments help fund underlying mortgage payments. If PBIC cannot bring the lease current, or fails to satisfy its cash call, PBIC risks losing its development rights and potentially its equity in the Landlord. There is significant interest in the Leased Premises and the related development rights, but PBIC will not be able to attract a partner or sell its position if the underlying mortgage is in default.

## **PART IV - FINANCIAL STATUS**

### **A. July 31, 2022 Unaudited Condensed Interim Consolidated Financial Statements**

59. PBIC’s most recently filed financial statements are its unaudited condensed interim consolidated financial statements for the period ended July 31, 2022 (the “**July 2022 Financial Statements**”). Attached hereto as **Exhibit “L”** is a copy of the July 2022 Financial Statements.

60. The July 2022 Financial Statements indicate that as of July 31, 2022, PBIC had assets of \$14,744,220 and liabilities of \$2,525,327, details of which are set out below.

#### **i. Assets**

61. According to the July 2022 Financial Statements, as at July 31, 2022, PBIC had total consolidated assets in the amount of \$14,744,220, composed of the following:

- (a) Cash and cash equivalents of \$22,680;
- (b) Interest receivable in the amount of \$305,489;
- (c) Investments in the amount of \$11,722,533;
- (d) Income tax receivable in the amount of \$1,133;
- (e) Intercompany receivables in the amount of \$1,593,291;
- (f) Other receivables in the amount of \$904,094; and
- (g) Other assets in the amount of \$195,000.

**ii. Liabilities**

62. According to the July 2022 Financial Statements, as at July 31, 2022, PBIC had total consolidated liabilities in the amount of \$2,525,327, composed of the following:

- (a) Accounts payable and accrued liabilities of \$1,487,746; and
- (b) A provision of \$1,037,581 on account of a demand letter made against PBIC in relation to a guarantee.

63. On July 12, 2022, a Statement of Claim bearing Ontario Superior Court of Justice File Number CV-22-00683888-0000 (the “**Canadabis Claim**”) was issued against PBIC, seeking damages of \$11,000,000. The Canadabis Claim was not reflected in the July 31, 2022 financial

statements because PBIC did not have sufficient time to evaluate its merit. A copy of the Canadabis Claim is attached hereto as **Exhibit “M”**

**B. Increase in Liabilities Since July 31, 2022**

64. Since the date of PBIC’s last financial statements, July 31, 2022, PBIC’s liabilities have increased:

- (a) accounts payable and accrued liabilities have increased by approximately \$895,215 consisting primarily of unpaid executive salaries, unpaid consultants’ fees, and unpaid legal bills; and
- (b) approximately \$500,000 of litigation claims, in addition to the \$11,000,000 Canadabis Claim, were issued against PBIC (described below).

65. In addition, PBIC owes approximately \$37,000 in arrears to the Canada Revenue Agency.

**i. Litigation**

66. The Plaintiff in the Canadabis Claim seeks, among other things, \$11,000,000 in damages from PBIC for the loss of value of Canadabis’ market capitalization. PBIC has defended the Canadabis Claim, and counterclaimed. Pleadings closed on or around October 17, 2022. Discovery has not occurred.

67. On November 7, 2022, Complaint was issued against PBIC bearing Nevada District Court Case No. A-22-860709-C (the “**Pearson Claim**”). The Plaintiff, Jamie L. Pearson, seeks approximately US\$344,000 in damages from PBIC, and one of its investee corporations Bhang

Corporation, related to the termination of her employment. Depositions are in the process of being scheduled. A copy of Pearson Claim is attached hereto as **Exhibit “N”**.

68. On March 23, 2023, a Notice of Claim bearing Provincial Court of British Columbia (Small Claims Court) Registry File Number 2372994 (the “**Proactive Claim**”) was issued against PBIC. The Plaintiff, Proactive Investors North America, seeks \$29,411.12 from PBIC in satisfaction of an alleged unpaid service fee. PBIC has not yet filed a defence. A copy of the Proactive Claim is attached hereto as **Exhibit “O”**.

### **C. Secured Indebtedness**

69. PBIC does not have any secured indebtedness. PBIC has one registration against it under the under the *Personal Property Security Act* (Ontario). This registration is in favour of the Lender, who is also the proposed DIP Lender, regarding the March Loan Agreement funds that were advanced and then returned in full. Attached hereto as **Exhibit “P”** is a copy of a Personal Property Security Registration System Enquiry Response Certificates current to April 24, 2023, in respect of PBIC.

## **PART V - CAUSES OF CURRENT FINANCIAL CHALLENGES.**

### **A. Market Challenges and PBIC’s Response**

70. PBIC’ historically focused its investments exclusively in cannabis companies through its Passive Public Portfolio, which have suffered from depreciated stock prices across the industry. As a result, the value of PBIC’s Passive Public Portfolio investments had substantially been declining over time, many of which PBIC has since monetized at a loss.

71. In response to industry trends, in May 2021, PBIC passed bylaws that allowed it to diversify its portfolio to permit investment in all the Plant-Based Industries, and to allow PBIC to focus on the Active Public Portfolio.

72. The Active Public Portfolio in particular holds significant interests in companies like Bhang Inc. Although most of PBIC's Active Public Portfolio investments are not liquid, these investments hold significant value to the company and its stakeholders, and PBIC should not be forced to liquidate, and instead be given time to find a strategic partner through these CCAA proceedings, because there is real value in PBIC's portfolio if appropriate capital contributions can be made to PBIC's investee companies. Conversely, if such capital contributions are not made, many of PBIC's investments will be worthless.

73. Over the past three years, the value of four of PBIC's investee companies – 20702099 Ontario Inc., Fume Growth Fund, Konnectcom, and Aion Therapeutic Inc. – has gone to zero. 207 Inc. was party to a joint venture for the development of an endogenous anti-addiction mechanism; Fume was a cannabis-plant distribution company based in California; Konnectcom developed intellectual property for the treatment of mental illness using Ketamine; and Aion was involved in various cannabis-related businesses. In each case, PBIC's inability to make timely capital contributions was a material contributing factor to the decline in value.

74. I expect a similar fate for Cali-Brands if PBIC does not find a long-term strategic partner. Cali-Brands leases a facility in Ontario in the process of being licensed for the processing and manufacturing cannabis and/or cannabinoids and related products. This lease is long-term and at below market rates, and the facility is in a prime location, giving the Cali-Brands lease significant value. To date, PBIC funding has been used for leasehold improvements and the installation of a



clean manufacturing room. The facility is only \$25,000 short of completion, but construction has been stalled because PBIC has not been able to provide funding. PBIC must continue paying rent, utilities and insurance on the Cali-Brand lease, and finish the leasehold improvements, in order to realize value from Cali-Brands.

75. Similarly, PBIC must make the monthly payments for the 483 Driggs Lease. PBIC has already been late on two monthly lease payments. The 483 Driggs Lease provides that if more than two monthly payments are late, the Landlord thereunder can exercise a guarantee against PBIC.

76. The vast majority of my time as CEO has been dedicated to financially restructuring PBIC. As stated above, over the past 18 months, I canvassed the debt and equity markets to address PBIC's liquidity issues. However, other than the March Loan Agreement, these efforts have been unsuccessful, due to (I believe) PBIC's extremely low stock price over the past year and general negative investor sentiment regarding cannabis securities. In addition, I sought co-investors as an alternative to using PBIC funds to fund investee expenses, but that effort was also unsuccessful.

77. In order to provide PBIC as much financial runway as possible, I have not taken a salary since approximately November 2022, and am owed in excess of \$400,000 in wages. The majority of most Directors' fees have also not been since approximately November 2022.

## **PART VI - NEED FOR CCAA PROTECTION**

### **A. Eligibility**

78. PBIC is insolvent because it cannot meet its obligations as they come due, and has ceased paying current obligations in the ordinary course of business.

79. As described above, the aggregate amount of claims being made against PBIC is more than \$5,000,000.

**B. Funding of the CCAA Proceedings**

80. On April 27, 2022, PBIC entered into a debtor-in-possession term sheet with the Lender (the “**DIP Term Sheet**”) to provide the DIP Loan.

81. Capitalized terms used and not otherwise defined in this section are as defined in the DIP Term Sheet

82. The material terms of the DIP Term Sheet are as follows:

- (a) DIP Facility – Non-revolving facility in the maximum principal amount of \$500,000.
- (b) Purpose – Fund: (i) working capital needs of the Borrower in accordance with the cash flow projections approved by the Monitor and the Lender from time to time (the “**Cash Flow Projections**”); (ii) the Lender’s Fees and Expenses; (iii) professional fees and expenses incurred by the Borrower and the Monitor in respect of the CCAA Proceedings and the SISP; and (iv) such other costs and expenses of the Borrower as may be agreed to by the Lender, in writing.
- (c) Advances – (i) Upon the issuance of the Initial Order, \$200,000, or such lesser amount as may be approved by the Initial Order, shall be advanced to the Borrower to finance working capital requirements for the 10-day period immediately following the date of the Initial Order (the “**First Advance**”); and (ii) upon the

issuance of the Amended and Restated Initial Order (the “**ARIO**”), the balance of the DIP Facility, being \$300,000 (the “**Second Advance**”).

- (d) Interest – Interest on the principal amount of each Advance outstanding from time to time shall be calculated at a rate equal to 12% per annum.
- (e) Fee – The Borrower shall pay a commitment fee in the amount of \$10,000, representing 2% of the total amount available.
- (f) Security - All debts, liabilities and obligations of the Borrower to the Lender under or in connection with the DIP Loan, the DIP Term Sheet and any other documents delivered in connection therewith shall be secured by a Court-ordered priority charge.
- (g) Funding Conditions – (i) The First Advance is conditional on the Court issuing the Initial Order; and (ii) the Second Advance is conditional on the Court issuing the ARIO.

83. A copy of the DIP Term Sheet is attached to my Affidavit as **Exhibit “Q”**.

84. Based on, among other things, the Cash Flow Forecast described below, PBIC believes that the DIP Loan is both reasonable and necessary.

## **PART VII - CASH FLOW FORECAST**

### **A. Cash Flow Forecast**

85. The Applicant has worked with the Proposed Monitor who has prepared a two-week cash flow forecast (the “**Cash Flow Forecast**”) for the week ending May 8, 2023. The Cash Flow

Forecast is premised on, among other things, the assumption that PBIC will be granted CCAA protection and that the DIP Term Sheet and DIP Lender's Charge will be approved as part of the Initial Order. I believe that the Cash Flow Forecast is a reasonable forecast of PBIC's cash flow for the Stay Period. Attached hereto as **Exhibit "R"** is a copy of the Cash Flow Forecast.

86. The Cash Flow Forecast indicates a closing cash balance of approximately \$3,572 over the week ending May 8, 2023.

## **PART VIII - PROPOSED INITIAL ORDER**

87. PBIC is seeking an Initial Order substantially in the form attached as Tab 4 to the Application Record.

### **A. The Stay of Proceedings in Favour of PBIC**

88. The Initial Order contemplates a stay of proceedings against PBIC and its Property for an initial period of ten (10) days. As set out below, I anticipate that PBIC will bring a motion during that period for an Order, among other things, extending the Stay Period and increasing the Priority Charges.

### **B. Initial Administration Charge**

89. PBIC seeks a super-priority charge over its Property in favour of the Monitor, counsel to the Monitor, and counsel to PBIC (collectively, the "**Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (the "**Administration Charge**").

90. The proposed Administration Charge being sought at the initial CCAA Application is for a maximum amount of \$150,000 in order to secure the payment of fees and expenses incurred in connection with moving for the within relief sought and for the initial ten (10) day protection period leading up to the first Comeback Hearing. The Administration Charge is proposed to rank as a first-priority charge on the Property.

91. It is contemplated that the Professionals Group will have extensive involvement during the CCAA proceedings. The Professionals Group have contributed and will continue to contribute to the restructuring of PBIC's business, and will ensure that there is no unnecessary duplication of roles among them.

92. Accordingly, I believe the quantum of the Administration Charge sought is reasonably necessary at this time to secure the professional fees of the Professionals Group.

#### **C. DIP Lender's Charge**

93. PBIC seeks a charge on PBIC's Property in favour of the DIP Lender (the "**DIP Lender's Charge**"). The proposed DIP Lender's Charge will secure only advances made until the Comeback Hearing, which are anticipated to be \$200,000. The DIP Lender's Charge is proposed to rank as a second-priority charge on the Property.

#### **D. Cash Management System**

94. PBIC seek the Court's authority to continue to utilize its existing Cash Management System.

95. PBIC requires use of the Cash Management System to continue operations during the CCAA proceedings.

96. The Cash Management System will be monitored by the Proposed Monitor throughout the CCAA proceedings. If appointed, and as part of its monitoring procedures, the Proposed Monitor will, among other things:

- (a) monitor PBIC's receipts and disbursements; and
- (b) monitor all payments, obligations and any transfers as between PBIC, consistent with the Cash Management System.

#### **E. Securities Filings**

97. PBIC seeks authorization to dispense with certain Securities Filing requirements. In particular, PBIC seeks authorization for PBIC to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions that may be required.

98. Incurring the time and costs associated with preparing the Securities Filings would detract from PBIC's successful restructuring by unnecessarily diverting important and limited financial and non-financial resources.

#### **PART IX - INTENTION TO SEEK SECOND ORDER**

99. As referred to above, PBIC plans to return to Court within the Stay Period following the Initial Order to seek an ARIO granting an extension of the Stay Period, and increasing the initial Administration Charge and the DIP Lender's Charge, as well as certain other relief.

## **PART X - THE PROPOSED MONITOR**

100. PBIC seeks the appointment of Spergel as Monitor of PBIC in these CCAA proceedings. Spergel has assisted in the preparation of the Cash Flow Statements and has provided guidance and assistance in the commencement of these CCAA proceedings.

101. As a result, Spergel has developed critical knowledge about PBIC, the business operations, financial challenges, strategic initiatives, and restructuring efforts to date.

102. Spergel is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada), and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

103. Spergel has consented to act as the Monitor, subject to Court approval. A copy of the Proposed Monitor's consent to act is attached hereto as **Exhibit "S"**.

## **PART XI - CONCLUSION**

104. I believe that PBIC ought to be granted protection under the CCAA. I am confident that granting the draft Initial Order is in the best interests of PBIC as well as its employees, creditors and other stakeholders. As set out above, I believe that given sufficient "breathing room" under the CCAA, PBIC will be able to solicit interest in its Active Public Investments that will maximize value for stakeholders.

105. I swear this affidavit in support of an Application under the CCAA for an Initial Order in the form contained at Tab 4 of the Application Record, and for no other purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 28<sup>th</sup> day of  
April 2023, in accordance with O. Reg.  
431/20 Administering Oath or Declaration  
Remotely.

*patrick corvey*

---

Commissioner for Taking Affidavits



---

PAUL CRATH



---

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PLANT-BASED INVESTMENT CORP.

Court File No.: CV-23-

---

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

Proceedings commenced at Toronto

---

**AFFIDAVIT OF PAUL CRATH  
(Sworn April 28, 2023)**

---

**MILLER THOMSON LLP**  
40 King Street West, Suite 5800  
Toronto, Ontario  
M5H 3S1, Canada

**Larry Ellis LSO#: 49313K**  
lellis@millerthomson.com  
Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**  
pcorney@millerthomson.com  
Tel: 416.595.8555

**James W. Reid LSA#: 18109**  
jwreid@millerthomson.com  
Tel: 403.298.2418

Lawyers for the Applicant

This is Exhibit "B" referred to  
in the Affidavit of Paul Crath  
sworn May 8, 2023

*patrick conroy*

---

A Commissioner for Oaths in and  
for the Province of Ontario

## **POLICY 2**

### **QUALIFICATIONS FOR LISTING**

2.1 This Policy sets out the minimum requirements that must be met as a pre-requisite to the Listing of securities on the Exchange, irrespective of Listing method.

- (1) These minimum requirements are not exhaustive. The Exchange may impose additional requirements as it determines appropriate, including those taking into consideration the public interest.

The Exchange has discretion to accept or reject applications for Listing. Satisfaction of the applicable requirements may not result in approval of the Listing application.

- (2) Where an application is made to list a security that is convertible into another security or backed by another security or asset, the Exchange must be satisfied that investors will be able to obtain the necessary information to form a reasoned opinion regarding the value of the underlying security or asset. This requirement may be met where the underlying security is listed on a stock exchange.

An issuer is eligible for Listing if is not in default of any requirements of securities law in any jurisdiction in Canada and:

- (a) has filed and received a receipt for a preliminary prospectus and a prospectus in a jurisdiction in Canada;
- (b) will only list debt securities issued or guaranteed by
  - (i) a government in Canada that are exempt from the prospectus requirements under paragraph 2.34(2)(a) of National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106") or clause 73(1)(a) of the *Securities Act* (Ontario), or
  - (ii) a Financial Institution that are exempt from the prospectus requirements under paragraph 2.34(2)(c) of NI 45-106 or clause 73(1)(b) of the *Securities Act* (Ontario); or
- (c) is a reporting issuer or the equivalent in a jurisdiction in Canada other than:
  - (i) solely as a result of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* or any similar rule that may be made by a Securities Regulatory Authority,
  - (ii) as a company with only a capital pool through the filing of a prospectus and has not completed a qualifying transaction as defined in the prospectus,
  - (iii) as a result of a business combination with a reporting issuer that was created, by way of a statutory plan of arrangement or other means, for the purpose of providing security holder distribution or reporting issuer status to the applicant, or
  - (iv) having a controlling interest of its principal assets or operations through

one or more special purpose entities or variable interest entities.

- (3) Each Issuer submitting a Listing application must:
- (a) prepare and file with the Exchange a Listing Statement and prescribed documentation;
  - (b) execute a Listing Agreement; and
  - (c) remit the applicable Listing fees, based on the type of securities to be listed, in accordance with the Exchange's fee schedule.

The Listing of the Issuer's securities will not be completed until the Listing fees in full have been received by the Exchange.

## **2.2 Eligibility for Listing**

- (1) An issuer must meet the eligibility requirements set out in the appendices to this Policy, based on the type of securities to be listed, as follows:
- (a) Equity Securities – Appendix 2A: Part A;
  - (b) debt securities - Appendix 2B: Part A; and
  - (c) SPACs – Appendix 2C: Part A.
- (2) In addition, if the Listed Issuer's securities are held out as being in compliance with specific, non-exchange-mandated requirements, the Listed Issuer must also comply with the requirements of Policy 10.
- (3) Eligibility of a particular issuer can usually be confirmed through discussions with the Exchange prior to an application. An issuer intending to apply for Listing concurrently with or immediately following the filing of a preliminary prospectus with a Securities Regulatory Authority must first receive confirmation from the Exchange that the eligibility requirements have been met by providing the information described in s. 2.3(1).

## **2.3 Required Documentation**

- (1) For the purpose of obtaining written confirmation of eligibility an issuer must submit a document with sufficient detail to determine that the eligibility requirements of the Exchange have been met or will be met prior to Listing. A draft prospectus will be accepted, provided the required information is included. For natural resource issuers, the relevant technical report is required. The Exchange will conduct a review ("Eligibility Review") and provide a confirmation of eligibility or identify any conditions to be met prior to Listing. The Eligibility Review is subject to a fee, which will be applied to the non-refundable portion of the Listing fee.
- (2) In connection with an initial application for Listing, an issuer must file with the Exchange the documents set out in the appendices to this Policy, based on the type of securities to be listed, as follows:
- (a) Equity Securities - Appendix 2A: Part B;

- (b) debt securities - Appendix 2B: Part B; and
- (c) SPACs – Appendix 2C: Part B

## **2.4 Limited Liability**

All securities to be listed must be fully paid and non-assessable.

## **2.5 Responses and Additional Information and Documentation**

The Listed Issuer must submit any additional information, documents or agreements requested by the Exchange.

## **2.6 Final Documentation**

- (1) The Exchange must receive the following documents prior to qualification for Listing:
  - (a) one executed original of the Listing Statement dated within three Business Days of the date it is submitted to the Exchange, together with any additions or amendments to the supporting documentation previously provided as required by Appendix A to the Listing Application;
  - (b) one original Listing Summary dated within three Business Days of the date it is submitted to the Exchange and all documents set out in the Listing Summary;
  - (c) two executed originals of the applicable Listing Agreement;
  - (d) three choices for a stock symbol;
  - (e) a legal opinion that the Listed Issuer:
    - (i) is in good standing under and not in default of applicable corporate law or other applicable laws of establishment,
    - (ii) has the corporate power and capacity to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into the Listing Agreement and to perform its obligations thereunder, and
    - (iii) has taken all necessary corporate action to authorize the execution, delivery and performance of the Listing Agreement and that the Listing Agreement has been duly executed and delivered by the Issuer and constitutes a legal, valid and binding obligation of the Listed Issuer, enforceable against the Listed Issuer in accordance with its terms;
    - (iv) is a reporting issuer or equivalent under the securities law of [state applicable jurisdictions] and is not in default of any requirement of any jurisdiction in which it is a reporting issuer or equivalent; or
    - (v) if it is not a reporting issuer and is proposing to list debt securities that qualify under section 1.1 of this Policy, that the securities so qualify; and
  - (f) a legal opinion that all securities previously issued of the class of securities to

be listed or that may be issued upon conversion, exercise or exchange of other previously issued securities are or will be duly issued and are or will be outstanding as fully paid and non-assessable securities.

## **2.7 Postings**

- (1) The Listed Issuer must Post the following:
  - (a) the Listing Statement, which must also be concurrently filed on SEDAR as a filing statement, including all reports and material contracts required to be filed therewith;
  - (b) the Listing Summary;
  - (c) the Listing Agreement;
  - (d) an executed Certificate of Compliance;
  - (e) an unqualified letter from the Clearing Corporation confirming the ISIN assigned to the securities;
  - (f) a letter from its duly appointed transfer agent indicating the date of appointment and stating that the transfer agent is ready to record security transfers and make prompt delivery of shares; and
  - (g) If the issuer completed a financing concurrently with Listing, or to qualify for Listing, a completed Notice of Proposed Issuance of Listed Securities.
- (2) All documents must be Posted in the format prescribed by the Exchange from time to time.

## **2.8 Posting Officer**

- (1) A Listed Issuer must designate at least two individuals to act as the Issuer's Posting officers ("Posting Officers"). The Posting Officers will be responsible for Posting or arranging for the Posting of all of the documents required to be Posted by the Issuer.
- (2) A Listed Issuer may Post documents through the facilities of a third-party service provider.

## **2.9 Continuing to Qualify for Listing**

- (1) A Listed Issuer must meet all of the following requirements, failing which the Listed Issuer may be subject to suspension, delisting, or such other action as the Exchange may determine appropriate for the situation:
  - (a) the Listed Issuer must be in good standing under and not in default of applicable corporate law or other applicable laws of establishment;
  - (b) in each jurisdiction in which the Listed Issuer is a reporting issuer or equivalent, it must remain in good standing and not be in default of any requirement of any such jurisdiction;

- (c) the Listed Issuer must be in compliance with Exchange Requirements, and the terms of the Listing Agreement;
  - (d) the Listed Issuer must Post all required documents and information required under the Policies of the Exchange;
  - (e) the Listed Issuer must concurrently Post all public documents submitted to SEDAR (unless identical disclosure has not already been Posted in an Exchange-specific Form);
  - (f) if the Issuer is required to submit PIFs for each Related Person at the time of Listing then the Listed Issuer must submit a PIF for any new Related Person of the Listed Issuer (and if any of these Persons is not an individual, a PIF for each director, officer and each Person who beneficially, directly or indirectly owns, controls or exercises direction over 20% or more of the voting rights of such non-individual);
  - (g) the Listed Issuer must take all reasonable care to ensure that any statement, document or other information which is provided to or made available to the Exchange or Posted by the Listed Issuer is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, document or other information.
  - (h) a Listed Issuer with Equity Securities listed must meet the continued Listing requirements described in section 2A.1(9) of Appendix 2A of this Policy.
- (2) Each Listed Issuer that is not a reporting issuer in Alberta must:
- (a) assess whether it has a Significant Connection to Alberta;
  - (b) upon becoming aware that it has a Significant Connection to Alberta, immediately notify the Exchange and promptly make a *bona fide* application to the Alberta Securities Commission to be deemed to be a reporting issuer in Alberta (a Listed Issuer must become a reporting issuer in Alberta within six months of becoming aware that it has a Significant Connection to Alberta);
  - (c) assess, on an annual basis, in connection with the delivery of its annual financial statements to security holders, whether it has a Significant Connection to Alberta;
  - (d) obtain and maintain for a period of three years after each annual review referenced in this section, evidence of residency of their Registered Holders and Beneficial Holders; and
  - (e) if requested, provide to the Exchange evidence of the residency of its non-objecting beneficial owners (as defined in National Policy 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*).
- (3) Where it appears to the Exchange that a Listed Issuer making an application for Listing has a Significant Connection to Alberta, the Exchange will, as a condition of its acceptance or approval of the Listing application, require the Listed Issuer to provide evidence that it has made a *bona fide* application to the Alberta Securities Commission to become a reporting issuer in Alberta.

## **2.10 Suspensions**

The Exchange may suspend from trading the securities of a Listed Issuer if the Exchange or the Market Regulator determines that the Listed Issuer fails to meet any requirement, or it is otherwise in the public interest to suspend trading of the securities of the Listed Issuer.

## **2.11 Listing in US Dollars**

Securities may be traded and quoted in US dollars.

## **2.12 Transfer and Registration of Securities**

- (1) The Listed Issuer must maintain transfer and registration facilities in good standing where the securities of the Listed Issuer are directly transferable. Where certificates are issued, they must name the cities where they are transferable and must be interchangeably transferable and identical in colour and form with each other.
- (2) **Treasury Orders**
  - (a) Every Listed Issuer must require that its transfer agent provide to the Exchange, within five business days following the issuance of any securities, a copy of the applicable treasury order.
  - (b) Each treasury order and reservation order submitted to the Listed Issuer's transfer agent must contain the following information:
    - (i) the date of the treasury order;
    - (ii) the name and municipality of the transfer agent;
    - (iii) full particulars of the number and type of securities being issued or reserved for issuance;
    - (iv) the issue price per security or the deemed issue price;
    - (v) the balance of issued securities of the Listed Issuer following the issuance;
    - (vi) the names and addresses of all parties to whom the securities are being issued or are reserved for issuance;
    - (vii) the date of the Exchange acceptance, if applicable, of the issuance of such securities;
    - (viii) confirmation that the Issuer has received full payment for the securities and that the securities are validly issued as fully paid and non-assessable;
    - (ix) instructions that the wording of any legend required by applicable securities laws or by s. 6.1(4) of Policy 6 be imprinted on the face of the certificate (or if the face of the certificate has insufficient space, on the back of the certificate with a reference on the face of the certificate to the legend); and
    - (x) a legend describing the hold period required by s 6.1(4) of Policy 6.



- (c) Every treasury order must be signed by at least two directors or senior officers of the Issuer. The names and titles of each signatory must be printed beneath their respective signatures.

### **2.13 Share Certificates**

- (1) Certificates must bear a valid ISIN number.
- (2) Certificates must conform with the requirements of the corporate and securities law applicable to the Listed Issuer.
- (3) The foregoing requirements, except for a valid ISIN, do not apply to a completely uncertificated issue that complies with the requirements of the Clearing Corporation.

### **2.14 Book-Based System**

The securities to be listed must be eligible for and deposited into the book-based system maintained by the Clearing Corporation.

### **2.15 Full, True & Plain Disclosure**

As an overriding principle, the Listing Statement must contain full, true and plain disclosure of all material facts regarding the securities issued or proposed to be issued by the Listed Issuer. Disclosure must include such particulars and information which, according to the particular nature of the Listed Issuer and the securities for which Listing is sought, are necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the Listed Issuer and of its profits and losses (and of any guarantee) and of the rights attaching to such securities and must set out such information accurately and in plain language.

### **2.16 Prior Violations**

The Exchange will not approve a Listed Issuer for Listing if any Related Persons, or investor relations Persons associated with the Listed Issuer have been convicted of fraud, been found liable of a breach of fiduciary duty, been sanctioned pursuant to violations of securities laws (other than a minor violation that does not necessarily give rise to investor protection or market integrity concerns) or any other activity that concerns integrity of conduct unless the Listed Issuer severs relations with such Person(s) to the satisfaction of the Exchange.

**2.17** The Exchange may not approve a Listed Issuer for Listing if any Related Persons, or investor relations Person(s) associated with the Listed Issuer:

- (a) have entered into a settlement agreement with a Securities Regulatory Authority or other authority;
- (b) are known to be associated with other offenders depending on the nature and

extent of the relationship and the seriousness of the offence committed; or

- (c) have a consistent record of business failures, particularly failures involving public companies,

unless the Listed Issuer first severs relations with such Person(s) to the satisfaction of the Exchange.

**2.18** The Exchange may deem any Person to be unacceptable to be associated in any manner with a Listed Issuer if the Exchange reasonably believes such association will give rise to investor protection concerns, could bring the Exchange into disrepute, or it is in the public interest to do so.

**2.19 ISIN Eligibility**

A Listed Issuer must confirm in writing to the Exchange that its securities to be listed have been made eligible in the Clearing Corporation prior to the start of trading of such securities.

## **APPENDIX 2A: Equity Securities**

For the purposes of this Appendix, Equity Securities include any securities that are convertible into Equity Securities. Appendix 2A does not apply to Special Purpose Acquisition Corporations

### **PART A: Eligibility for Listing**

#### **2A.1 GENERAL**

In addition to meeting the minimum Listing requirements at the time of Listing, an issuer meeting the NV Issuer requirements set out in this Appendix 2A may be considered by the Exchange to be an NV Issuer.

##### **(1) Business Development Prior to Listing**

The qualifications for Listing are intended to allow for early-stage businesses that are well managed and are adequately financed with clearly stated objectives. An issuer that appears to be a shell company or a blind pool company with little or no operating history, a limited history of financing, or minimal expenditures to develop the business or proposed business in which it operates or intends to operate may be considered ineligible for Listing. In such cases the Exchange will also consider the relevant experience of the Board and senior management of the issuer. Listing expenses or fees for professional services associated with Listing do not qualify as business development expenditures.

##### **(2) Pursuit of Objectives and Milestones**

The comprehensive disclosure provided in a Listing Statement describes the business objectives and milestones of a Listed Issuer and how available funds and management effort will be spent to achieve those objectives or reach those milestones. An issuer that has applied and been granted a Listing based on the disclosure in a Listing Statement should diligently pursue those objectives or engage in the business activities described in that disclosure.

#### **2A.2 Float and Distribution**

For the purposes of Policy 2, a “Public Holder” is any security holder other than: a Related Person, an employee of a Related Person of a Listed Issuer or any Person or group of Persons acting jointly or in concert holding:

- (a) more than 10% of the issued and outstanding securities of the class to be listed;  
or
- (b) securities convertible or exchangeable into the listed Equity Security and would, on conversion or exchange, hold more than 10% of the issued and

outstanding securities of the class to be listed.

- (1) Minimum Float
  - (a) An issuer of Equity Securities must have a Public Float of at least 1,000,000 Freely Tradeable shares and consisting of at least 150 Public Holders holding at least a Board Lot each of the security. The Public Float must constitute at least 20% of the total issued and outstanding of that security.
  - (b) NV Issuer - A Listed Issuer must have: (i) a Public Float of at least 1,000,000 Freely Tradeable securities and (ii) at least 300 Public Holders each holding at least a Board Lot.
  - (c) Closed End Funds, ETFs and Structured Products must meet the minimum float requirements for an NV Issuer.
- (2) The Exchange may not consider as part of the Public Float any shares that were obtained in a distribution that was primarily effected as a gift or through an arrangement primarily designed for the purpose of meeting the minimum float distribution requirement. The minimum float distribution requirement will not be met if a significant number of the public security holders:
  - (a) did not purchase the shares directly or received or will receive the shares in exchange for previously purchased shares of another issuer; or
  - (b) hold the minimum number of shares described in s. 2A.2(1) above.

### **2A.3 Restricted Securities**

This section is applicable to Listed Issuers with outstanding listed Restricted Securities or those intending to list Restricted Securities. Restricted share structures may not be appropriate for all Listed Issuers. Details of a proposed issuance of Superior Voting Securities should be provided to the Exchange in advance of the Listed Issuer seeking security-holder approval.

- (1) Restricted Securities
  - (a) A Listed Issuer's constating documents must clearly designate and identify any securities that are Restricted Securities. Such securities will be identified by the Exchange as Restricted Securities in market data displays prepared for the financial media.
  - (b) A class of shares may not be designated or identified in any Listed Issuer's constating documents or other communication as 'common' unless the shares are Common Shares and there are no Superior Voting Securities.
  - (c) A class of shares may not be designated or identified in any Listed Issuer's constating documents or other communication as 'preference' or 'preferred' securities unless the shares are Preference Shares.
  - (d) A Listed Issuer's constating documents must provide Restricted Security holders the same right to receive notice of, attend and speak at all shareholder meetings as holders of any Superior Voting Securities and to receive all disclosure documents and other information sent to holders of any Superior Voting Securities.

- (e) A Listed Issuer with outstanding listed Restricted Securities or those intending to list Restricted Securities must include in its Listing Statement the disclosure required by Part 2 of OSC Rule 56-501 *Restricted Shares*.

## **(2) Coattail Provisions**

- (a) Coattail provisions are intended to ensure that holders of Restricted Securities are able to participate in a Take-Over Bid together with holders of Superior Voting Securities, proportionate to their equity interests in the Listed Issuer. The Exchange may intervene in a transaction that has been structured to circumvent the coattail provisions.
- (b) Subject to s. 2A.3(2)(c), the Exchange will not list Restricted Securities unless the Listed Issuer's constating documents or an agreement provide that if a Take-Over Bid is made for Superior Voting Securities, whether or not the Superior Voting Securities are listed, all Restricted Securities will automatically convert to Superior Voting Securities unless an identical offer (in terms of price per share, percentage of shares to be taken up exclusive of shares already owned by the offeror and its associates and all other material terms) is concurrently made to Restricted Security holders.
- (c) If the class or classes of Superior Voting Securities are not publicly traded, the Exchange may accept a coattail agreement executed by all holders of those shares that stipulates that they will not tender to a Take-Over Bid unless an identical offer as described in s. 2A.3(2)(b) is also made to the holders of the Restricted Securities.
- (d) The conversion right or identical offer described in subsection s. 2A.3(2)(b) and (c) may contain appropriate modifications to account for any material difference between the equity interests of the Restricted Securities and Superior Voting Securities.

## **(3) Issuance of Restricted and Superior Voting Securities**

- (a) A Listed Issuer may not distribute any Superior Voting Securities unless the distribution has been approved by the holders, that do not or would not have an interest in the Superior Voting Securities, of the Restricted Securities.
- (b) For the purpose of the approval described in 2A.3(3)(a), security holders that have or would have an interest in the Superior Voting Shares after the distribution may not vote.
- (c) The Exchange will consider an exemption from the security holder approval requirement in 2A.3(3)(a) where the Listed Issuer demonstrates that the proposed distribution of Superior Voting Securities would not reduce the voting power of the holders of Restricted Securities.
- (d) Notwithstanding the security holder approval requirements, the Exchange will generally object to the distribution of Superior Voting Securities of a Listed Issuer that is not an NV Issuer.

## 2A.4 Basic Qualifications

- (1) To qualify for Listing an issuer must be:
  - (a) an operating company with revenue from the sale of goods or services;
  - (b) a non-operating company with financial resources to carry out a proposed work plan or achieve stated objectives for 12 months following Listing, subject to a minimum of \$200,000 in working capital at the time of Listing, and have advanced to a stage of development at which additional financing is typically available to the companies in the industry;
  - (c) a company that is listed on an exchange in Canada and is not proposing a transaction or change that would be considered a Fundamental Change or Change of Business, provided that the Company has the financial resources to achieve stated objectives for 12 months following Listing. This qualification will not be met by an issuer that is only listed on a board or tier of a stock exchange that is designated for issuers that do not meet the ongoing requirements of that exchange or
  - (d) an ETF or CEF
- (2) An NV Issuer must also meet at least one of the four standards set out in this section. The Exchange may, in its sole discretion, designate a Listed Issuer as a NV Issuer if the Listed Issuer is sufficiently advanced in capitalization or operations that it is near the thresholds of at least two of the four tests or the Exchange determines it would be in the public interest to do so. The standards are as follows, with market value being based on the number of outstanding securities and the IPO price or concurrent financing price:
  - (a) Equity Standard:
    - (i) Shareholders' equity of at least \$5,000,000, and
    - (ii) Expected market value of Public Float of at least \$10,000,000; or
  - (b) Net Income Standard:
    - (i) Net income of at least \$400,000 from continuing operations in the most recent fiscal year or in two of three of the most recent fiscal years,
    - (ii) Shareholders' equity of at least \$2,500,000, and
    - (iii) Expected market value of Public Float of at least \$5,000,000; or
  - (c) Market Value Standard:
    - (i) Market value of all securities, including the class(es) to be listed and any class convertible into the class(es) to be listed, but excluding warrants and options, of at least \$50,000,000,
    - (ii) Shareholders' equity of at least \$2,500,000 including the value of any offering concurrent with Listing, and
    - (iii) Expected market value of Public Float of at least \$10,000,000; or

(d) Assets and Revenue Standard:

- (i) Total assets and total revenues of at least \$50,000,000 each in the most recent fiscal year or in two of three of the most recent fiscal years, and
- (ii) Expected market value of Public Float of at least \$5,000,000.

(3) **Closed End Funds and ETFs**

- (a) Closed End Funds must have a Minimum Net Asset Value of \$10,000,000;
- (b) ETFs must have a Minimum Net Asset Value of \$1,000,000;
- (c) An ETF or CEF must confirm to the Exchange that the net asset value will be published each Trading Day.

(4) An operating company must have achieved revenue from the sale of goods or the delivery of services to customers and these revenues must appear on its audited financial statements or on an interim financial statement supported by a comfort letter from the company's auditor. Such companies must have financial resources and a business plan that demonstrate a reasonable likelihood that the company can sustain its operations and achieve its objectives for 12 months following Listing.

(5) A non-operating company must have

- (a) a significant interest in its primary business or asset,
- (b) a history of development of the business or asset, and
- (c) specific objectives and milestones and the financial resources necessary to achieve them.

In determining whether the company has met requirements (b) and (c) above, the Exchange will consider the capital invested in the development of the business or asset and evidence of testing, development or manufacturing of the product or service, including prototypes, clinical trials or sponsorships.

(6) **Industry-specific Requirements for Natural Resource Companies**

The following industry criteria apply:

(a) A mineral exploration company:

- (i) must have title to a property that is prospective for minerals and on which there has been exploration previously conducted including qualifying expenditures of at least \$150,000 by the Listed Issuer during the most recent 36 months (if the company does not have title to the property, it must have the means and ability to acquire an interest in the property upon completion of specific objectives or milestones within a defined period);
- (ii) must have obtained an independent report that meets the requirements of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and that recommends further exploration on the property, with a budget for the first phase of at least \$250,000; and,

- (iii) if meeting the minimum Listing requirements with a single exploration project, include disclosure of its objectives to pursue additional exploration projects or opportunities or to otherwise remain in the mineral exploration business.

Qualifying expenditures include exploration expenditures related to geological and scientific surveys to advance mineral project but do not include general and administrative, land maintenance, property acquisition or payments, staking, investor or public relations, non-domestic flight expenditures or taxes.

(b) Additional Considerations for Mineral Exploration

Notwithstanding the minimum requirements set out in 2A.4(6)(a), an issuer may be approved for listing with:

- (i) qualifying exploration expenditures as described in 2A.4(6)(a)(i) of at least \$75,000; and
- (ii) A first phase budget as described in 2A.4(6)(a)(ii) of at least \$100,000; and
- (iii) An escrow agreement as described in 2A.5(8)(e).

(c) An energy resource company must have:

- (i) title to a property on which measurable quantities of conventional energy resources have been identified or the means and ability to acquire an interest in the property upon meeting specific objectives or milestones within a defined period; or
- (ii) title to an unproven property with prospects or the means and ability to acquire a significant interest in the property upon completion of a fully financed exploration program. The company must also submit a qualifying report on the property in accordance with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

**(7) Industry Specific Requirements for Investment or Real Estate Companies**

An investment or real estate company must have an appropriate balance between income and activity depending on the nature of its investments. A holding company that is not active in the management of investee companies should own majority interests or have effective control in businesses that can generate returns that will flow to the shareholders through distributions, or have prospects for growth through the reinvestment of earnings. Such companies must have:

- (a) minimum net assets of:
  - (i) \$2 million, at least 50% of which has been allocated to at least 2 specific investments; or
  - (ii) \$4 million; and
- (b) management with a track record of acquiring and divesting interests in arm's-length enterprises in a manner that can be characterized as conducting



an active business.

(c) a clearly defined investment policy disclosed in the Listing Statement.

## **2A.5 CAPITAL STRUCTURE, BUILDER SHARES AND ESCROW**

### **(1) Capital Structure**

A Listed Issuer's capital structure must be acceptable to the Exchange.

### **(2) Builder Shares & Low-Priced Shares**

Notwithstanding the specific restrictions set out in 2A.5(4), the Exchange may determine that the number of Builder Shares combined with shares issued at or near the Builder Share threshold price appears to be excessively dilutive or imbalanced. In such cases the Exchange may object unless adjustments are made.

### **(3) Pricing**

A Listed Issuer may not sell securities pursuant to an IPO for less than

(a) \$0.10 per share or unit; or

(b) For an NV Issuer, \$2.00 per share or unit.

For Listed Issuers not yet generating revenue from business activity, the Exchange will not consider an application where Builder Shares have been issued for less than \$0.005 in the previous 24-month period.

### **(4) Specific Restrictions**

At the time of Listing, or re-qualifying following a Fundamental Change:

(a) The ratio of shares in the post-offering or reverse takeover capital structure must not exceed one Builder Share for every three non-Builder Shares.

(b) Where there is no concurrent financing, the minimum permitted price at which securities can be exercisable or convertible into the listed security and not be subject to escrow is \$0.10.

(c) The Exchange will not permit the exercise, conversion or exchange price of any exercisable, convertible or exchangeable security to be fixed until the security has been granted or issued to a particular Person.

### **(5) Substantial Float**

The Exchange may consider exercising discretion to amend or waive the requirements of paragraphs (3) and (4) of section 2A.5 if a Listed Issuer has a "Substantial Float". The Exchange will generally consider a Listed Issuer that meets all the following

criteria to have a Substantial Float:

- (a) \$2,000,000 in capital raised, excluding funds from Related Persons;
  - (b) 2,000,000 Free Trading shares;
  - (c) 200 public shareholders with a minimum of one Board Lot each with no resale restrictions
- (6) Acceptance of an alternative proposed structure is contingent upon an evaluation by the Exchange using the following criteria:
- (a) track record, quality and experience of management and Board;
  - (b) percentage of time devoted by management to the Listed Issuer;
  - (c) capital contribution (cash paid in, reasonable value of assets and reasonable value of services performed, less any cash payments) by Related Persons;
  - (d) relationship of capital contribution to ownership by Related Persons; and
  - (e) relationship of share price in pre-IPO financing rounds to the IPO price.
- (7) All issuances prior to Listing will be reviewed *seriatim* to determine suitability taking into account management activity, significant Developments, and elapsed time as well as arm's-length party participation.

(8) **Escrow**

Prior to Listing, all securities issued to Related Persons are generally required to be subject to an escrow agreement pursuant to National Policy 46-201 *Escrow for Initial Public Offerings* ("NP 46-201").

- (a) In addition, where convertible securities (such as Stock Options, common share purchase warrants, special warrants, convertible debentures or notes) are issued less than 18 months before Listing and are exercisable or convertible into listed securities at a price that is less than the issuance price per security under a prospectus offering or other financing or acquisition made contemporaneously with the Listing application, then the underlying security will be subject to escrow with releases scheduled at periods specified under NP 46-201.
- (b) A Listed Issuer that has, within the six months prior to applying to list on the Exchange, completed a transaction that would have been considered a Fundamental Change, must enter into escrow agreements with the Related Persons as if the Listed Issuer were subject to the requirements of NP 46-201 and the provisions of section 8.8 of Policy 8 shall apply in all respects to the Listed Issuer.
- (c) Related Persons with securities that have been previously subject to a required escrow agreement will not generally be required to enter a new escrow agreement.
- (d) The Exchange, in its sole discretion, may impose escrow arrangements that are in addition to those required by NP 46-201, or consider different proposals

such as an “earn-out” escrow, on a case-by-case basis.

- (e) For a Listed Issuer approved pursuant to 2A.4(6)(b) *Additional Considerations for Mineral Exploration* the following additional escrow requirements apply:
- (i) All Builder Shares are subject to escrow, regardless of the holder of such shares
  - (ii) The initial release from escrow is subject to Exchange approval and must be no earlier than 10 days following public announcement of the results of the first phase program described in the Listing Statement.
  - (iii) Transfer of shares within escrow as described in NP46-201 s. 6.3(1)(a), (b), or (c) is not permitted without Exchange approval. The Exchange will generally not approve transfers associated with incoming or outgoing officers or directors of a Listed Issuer
  - (iv) The terms of the escrow agreement must irrevocably authorize and direct the escrow agent to immediately cancel all remaining escrowed securities upon delisting from the Exchange or the announcement of a change of business or a definitive agreement for a transaction that would constitute a Fundamental Change.

## **2A.6 Continued Listing Requirements**

### **(1) Minimum**

In addition to the general requirements in section 2.9, a Listed Issuer with Equity Securities listed must meet the specific criteria set out below on an annual basis:

#### **(a) Public distribution**

- (i) minimum of 250,000 shares in the Public Float;
- (ii) 10% or more of listed shares in the Public Float;
- (iii) at least 150 public security holders each holding one Board Lot of freely trading shares, subject to the exemption provided in Policy 9 that would permit no less than 100 public security holders immediately following a consolidation;

#### **(b) Financial resources**

Adequate working capital or financial resources to maintain operations for a period of 6 months.

#### **(c) Assets**

No specific value, however, the Exchange may determine that a Listed Issuer no longer meets the continued Listing requirements if the Listed Issuer:

- (i) reduces or impairs its principal operating assets; or
- (ii) ceases or substantively reduces its business operations.

#### **(d) Activity for a mining or oil and gas Listed Issuer, either:**

- (i) For the most recent fiscal year, positive cash flow, significant revenue from operations, or \$50,000 in exploration or development expenditures; or
  - (ii) For the three most recent fiscal years, an aggregate of \$100,000 in exploration or development expenditures.
- (e) Activity for industry segments other than mining or oil & gas, either:
- (i) For the most recent fiscal year, positive cash flow, or \$100,000 in revenue from operations or \$100,000 in development expenditures; or
  - (ii) For the three most recent fiscal years, either \$200,000 in operating revenues or \$200,000 in expenditures directly related to the development of the business.

## **(2) NV Issuers**

In addition to the general requirements in section 2.9, an NV Issuer with Equity Securities listed must meet the specific criteria set out below on an annual basis:

- (a) Public Distribution
  - (i) 500,000 shares in the Public Float; and
  - (ii) Public Float value of \$2,000,000.
- (b) Standards
  - (i) Net income from continuing operations of \$100,000; or
  - (ii) Market value of listed securities of at least \$3,000,000.

In determining whether the standards of 2A.6(2)(b) have been met, the Exchange may exercise discretion in consideration of general economic conditions and the economic conditions affecting the industry of the Issuer.

## **(3) Closed End Funds**

In addition to the general requirements in s. 2.9 a Closed End Fund must continue to meet the following criteria:

- (a) Public Distribution
  - (i) 500,000 securities in the Public Float;
  - (ii) Net asset value of \$3,000,000;
  - (iii) 150 public holders holding at least one Board Lot;
- (b) The net asset value is published each Trading Day.

## **(4) Exchange Traded Funds**

In addition to the general requirements in section 2.9 an Exchange Traded Fund must

continue to meet the following criteria:

- (a) Net Asset Value of \$500,000;
- (b) The net asset value is published each Trading Day.

**(5) Structured Products**

In addition to the general requirements in section 2.9 a Structured Product must continue to meet the following criteria:

- (a) Net Asset Value of \$500,000.

## **PART B: Documents required with application**

### **2A.7 Application**

- (1) The application for Listing must include the following:
  - (a) an Application Letter for Listing one or more specific classes of Equity Securities of the Listed Issuer, indicating the number and class of the Listed Issuer's securities issued and outstanding and, if convertible or exchangeable securities are issued and outstanding, the number and type of securities reserved for issuance;
  - (b) a completed Listing Application together with the supporting documentation set out in Appendix A to the Listing Application;
  - (c) a draft Listing Statement including financial statements approved by the Listed Issuer's Board or its audit committee;
  - (d) a duly executed PIF from each Related Person of the Listed Issuer and, if any of these Persons is not an individual, a PIF from each director, senior officer and each Person who beneficially, directly or indirectly owns, controls or exercises direction over 20% or more of the voting rights of such non-individual;
  - (e) current insider reports from each Person required to file a PIF, as filed with the applicable Securities Regulatory Authority; or confirmation that a SEDI profile has been created or an undertaking to create such profile;
  - (f) if applicable, the escrow agreement required under s. 2A.5(8); and
  - (g) the relevant portion of the listing fees, plus applicable taxes.

## **APPENDIX 2B: Debt Securities**

For the purposes of this Appendix, “debt securities” includes bonds, debentures, notes, Eurobonds, medium term notes, Sukuk (Islamic bonds) and any other fixed income security that the Exchange deems to be a debt security.

### **PART A: Eligibility for Listing**

#### **2B.1 General**

- (1) A Listed Issuer must have net assets of at least \$1 million or where the Listed Issuer is a special purpose vehicle, or a holding company that does not meet this requirement itself, the Exchange may consider the assets of an underlying entity.
- (2) In the case of asset-backed securities, a trustee or other independent representative must be appointed to represent the interests of the holders of the asset-backed securities and the trustee or an independent custodian must hold the underlying assets and all money and benefits flowing from the assets to the Listed Issuer or the holder of the asset-backed securities.
- (3) In the case of asset-backed securities that are secured on debt obligations or other receivables from a managed pool of assets, the entity appointed to manage the pool of assets must have adequate experience and expertise and such entity must be required to provide periodic financial reports on the performance and credit quality of the pool, for the benefit of the trustee.
- (4) In the case of asset-backed securities that are secured by Equity Securities, the Equity Securities must represent minority interests in, and must not carry legal or management control of, the underlying entities and must be listed on the Exchange or listed on another exchange recognized for this purpose by the Exchange.
- (5) The Listed Issuer must appoint and maintain a payment agent acceptable to the Exchange.

## **PART B: Documents required with application**

### **2B.2 Application**

- (1) The application for Listing must include the following:
  - (a) an Application Letter for Listing one or more specific classes of securities of the Listed Issuer;
  - (b) a completed Listing Application together with the supporting documentation set out below;
  - (c) a draft Listing Statement including financial statements approved by the Listed Issuer's Board or its audit committee;
  - (d) a duly executed PIF from each Related Person of the Listed Issuer and, if any of these Persons is not an individual, a PIF from each director, senior officer and each Person who beneficially, directly or indirectly owns, controls or exercises direction over 20% or more of the voting rights of such non-individual;
  - (e) current insider reports from each Person required to file a PIF, as filed with the Securities Regulatory Authority; and
  - (f) the relevant portion of the Listing fees, plus applicable taxes.

The Exchange may, at its sole discretion, determine that items (d) and (e) do not apply to an application to list a debt security that is exempt from prospectus requirements under applicable securities law.

#### **(2) Listing Statement**

The Listing Statement is required to be submitted to the Exchange or in the case of a tranche issued pursuant to a programme, a term sheet shall be submitted.

#### **(3) Supporting Documents**

In addition to the Listing Application the Issuer must submit:

- (a) the participation agreement; and
- (b) the declaration of trust or other document constituting the securities.

The Exchange may also require a legal opinion that confirms that the debt securities have been duly constituted.

#### **(4) Pre-approval of Issuance Programmes**

- (a) Where a Listed Issuer issues debt securities of the same class on a regular basis under an issuance programme a Listed Issuer may make an application for the pre-approval of the Listing of a specified number of securities which may be issued in a particular case.



- (b) Where debt securities are to be issued under an issuance programme, the initial application must cover the maximum number of securities that may be in issue at any one time under the programme. If the Exchange approves the application, it will grant pre-approval for the Listing of all the securities that may be issued under the programme within twelve (12) months after the approval, subject to the Exchange receiving:
    - (i) advice of the final terms of each issue,
    - (ii) copies of any supplementary document or pricing supplement issued in support of the tranche or series,
    - (iii) confirmation that the Issuer is still in full compliance with Exchange Policy and that the issue falls within the terms and conditions of the issuance programme, and
    - (iv) confirmation that the securities in question have been issued.
  - (c) The debt securities to be issued under an issuance programme must be identical, except in respect of their designation (i.e., they can be different series), the term of the securities (i.e., the maturity date may vary), the amount of the tranche (within the overall maximum amount of the programme), and the yield (e.g., the coupon rate may vary). Securities that are not identical may not be issued under a programme and will require a separate application.
- (5) The final terms of each issue which is intended to be listed must be submitted in writing to the Exchange as soon as possible after they have been agreed and, in any event, no later than two (2) Business Days before the Listing is required to become effective. The Exchange reserves the right to impose additional requirements on an issue made under an issuance programme, including imposing a requirement to make a new application in respect of that issue, if it considers that the issue does not fall within the scope of the programme.

## APPENDIX 2C: Special Purpose Acquisition Corporations

All securities are subject to the requirements of the “General” section of Policy 2

In this Appendix:

### PART A: Eligibility for Listing

#### 2C.1 General Listing Matters

##### *Securities to be Listed*

- (1) A SPAC must submit a Listing Application sufficient to demonstrate that it is able to meet the Exchange's original Listing requirements for SPACs, as detailed in Policy 2.

##### *Exchange Discretion*

- (2) Pursuant to Section 2.1(1), the Exchange may grant or deny the application notwithstanding the prescribed original Listing requirements. In exercising its discretion, the Exchange must be satisfied that public interest considerations are satisfied. In addition, the Exchange will consider:
  - (a) The experience and track record of the officers and directors of the SPAC;
  - (b) The nature and extent of officers' and directors' compensation; and
  - (c) The extent of the Founding Security Holders' equity ownership in the SPAC, which is generally expected to be an aggregate equity interest of: (i) not less than 10% of the SPAC immediately following closing of the IPO; and (ii) not more than 20% of the SPAC immediately following closing of the IPO, taking into account the price at which the founding securities are purchased and the resulting economic dilution.

#### 2C.2 Original Listing Requirements

##### *IPO*

- (1) A SPAC must raise a minimum of \$30,000,000 through the sale of shares or units by way of a prospectus offering. A unit may contain no more than one share, and no more than two warrants.
- (2) Builder Shares and Resale Restrictions
  - (a) The terms of purchase of SPAC Builder Shares must be disclosed in the IPO prospectus.
  - (b) The founding shareholders must agree not to transfer any of their SPAC Builder Shares prior to the completion of a Qualifying Acquisition and that in the event of liquidation and delisting, SPAC Builder Shares will not participate in the liquidation distribution.

- (3) The shares, warrants, rights, units or other securities to be listed on the Exchange must be qualified by a prospectus received by the Listed Issuer's principal regulator.

#### *No Operating Business*

- (4) An issuer is not eligible for Listing as a SPAC if it is carrying on an active business, or if has entered into a binding acquisition agreement for a Qualifying Acquisition. A statement that the issuer has not entered into such an agreement must be included in the IPO prospectus. The SPAC may have identified a target business sector or geographic area in which to make a Qualifying Acquisition, provided that it discloses this information in its IPO prospectus.

#### *Jurisdiction of Incorporation*

- (5) The jurisdiction of incorporation must be acceptable to the Exchange. Where the Listed Issuer is incorporated in a jurisdiction outside of Canada, the Listed Issuer should first consult with the Exchange to determine acceptability.

#### (6) Capital Structure

The capital structure of a SPAC must be acceptable to the Exchange.

(a) Except for the SPAC Builder Shares, listed securities must have:

- (i) A redemption feature or similar feature that will permit holders, in the event that a Qualifying Acquisition is completed within the permitted time as set out in section 2C.4(1), to elect that each share held be redeemed for an amount at least equal to the aggregate amount remaining in the escrow account (net of applicable taxes and expenses related to redemption) divided by the number of shares outstanding, excluding SPAC Builder Shares; and
- (ii) A liquidation distribution or similar feature that will provide holders, for each share held, if the qualifying transaction is not completed within the permitted time as set out in section 2C.4(1), an amount equal to the aggregate amount remaining in the escrow account (net of applicable taxes and expenses related to liquidation distribution) divided by the number of shares outstanding, excluding SPAC Builder Shares.

A Listed Issuer may establish a maximum number of shares to which an individual, with affiliates or Persons acting jointly or in concert, may exercise a redemption right, provided that such limit is not lower than 15% of the shares sold in the IPO and the limit is disclosed in the prospectus.

Exchange discretion with respect to the requirements of this subsection may only be exercised after discussions with, and the concurrence of, the OSC and BCSC.

- (b) In addition to Section 2C.2(6)(a), if share purchase warrants are issued in the IPO:

- (i) the share purchase warrants must not be exercisable prior to the completion of the Qualifying Acquisition;
- (ii) the share purchase warrants must expire on the earlier of: a date specified in the IPO prospectus, and the date on which the SPAC fails to complete a Qualifying Acquisition within the permitted time set out in s. 2C.4; and
- (iii) share purchase warrants will not have an entitlement to the escrowed funds upon liquidation of the SPAC.

#### *Prohibition of Debt Financing*

- (7) A SPAC shall not be permitted to obtain any form of debt financing (excluding ordinary course short term trade or accounts payables) other than contemporaneous with, or after, completion of its Qualifying Acquisition. A credit facility may be entered into prior to completion of a Qualifying Acquisition, but may only be drawn down contemporaneous with, or after, completion of a Qualifying Acquisition. The Listed Issuer must include a statement in its IPO prospectus that it will not obtain any form of debt financing other than in accordance with this Section 2C.2(7).

Despite the foregoing, a SPAC may obtain unsecured loans on reasonable commercial terms, including from Founding Security Holders or their affiliates, up to a maximum aggregate principal amount no greater than 10% of the funds escrowed under Section 2C.2(8), repayable in cash no earlier than the closing of the Qualifying Acquisition, provided that (1) such limit is disclosed in the IPO prospectus and the prospectus of the resulting issuer; and (2) any such debt financing obtained by the SPAC shall not have recourse against the escrowed funds.

#### *Use of Proceeds Raised in the IPO and Escrow Requirements*

- (8) Concurrent with Listing, 90% of the gross proceeds raised in the IPO, and the underwriter's deferred commissions (in accordance with Section 2C.2(11)), must be placed in escrow with an escrow agent acceptable to the Exchange.
- (9) The escrow agent must invest the escrowed funds in Permitted Investments. The SPAC must disclose the proposed nature of this investment in its IPO prospectus, as well as any intended use of the interest or other proceeds earned on the escrowed funds from the Permitted Investments.
- (10) The escrow agreement governing the escrowed funds must provide for:
  - (a) the termination of the escrow and release of the escrowed funds on a pro rata basis to shareholders who exercise their redemption rights in accordance with Section 2C.2(6)(a)(i) and the remaining escrowed funds to the Listed Issuer if the Listed Issuer completes a Qualifying Acquisition within the permitted time

set out in Section 2C.4(1); and

- (b) the termination of the escrow and the distribution of the escrowed funds to shareholders (other than for SPAC Builder Shares) in accordance with s. 2C.2(6)(a)(ii) and the terms of s. 2C.5 if the Listed Issuer fails to complete a Qualifying Acquisition within the permitted time set out in Section 2C.4(1).
- (11) The underwriters must agree to defer and deposit a minimum of 50% of their commissions from the IPO as part of the escrowed funds. The deferred commissions will only be released to the underwriters upon completion of a Qualifying Acquisition within the permitted time set out in Section 2C.4(1). If the SPAC fails to complete a Qualifying Acquisition within the permitted time set out in Section 2C.4(1), the deferred commissions placed in escrow will be distributed to the holders of the applicable shares as part of the liquidation distribution. Shareholders exercising their redemption rights will be entitled to their pro rata portion of the escrowed funds including any deferred commissions.
- (12) The proceeds from the IPO that are not placed in escrow, if any, and interest or other proceeds earned on the escrowed funds from Permitted Investments may be applied as payment for administrative expenses incurred by the SPAC in connection with the IPO, for general working capital expenses and for the identification and completion of a Qualifying Acquisition.

#### *Float and Distribution*

- (13) The Listed Issuer must satisfy all of the criteria below:
- (a) at least 1,000,000 Freely Tradeable securities are held by public holders;
  - (b) the aggregate market value of the securities held by public holders is at least \$30,000,000; and
  - (c) at least 150 public holders of securities, holding at least one Board Lot each.

#### *Pricing*

- (14) The minimum IPO price is \$2.00 per share or unit.

#### *Other Requirements*

- (15) A SPAC will not be permitted to adopt a Security Based Compensation Arrangement prior to the completion of a Qualifying Acquisition.

### **2C.3 Continued Listing Requirements Prior to Completion of a Qualifying Acquisition**

### *Additional Equity by way of Rights Offering Only*

- (1) Prior to completion of a Qualifying Acquisition, a SPAC may only raise additional capital by way of a rights offering in accordance with the requirements in Policy 6 and at least 90% of the funds raised must be placed in escrow in accordance with the provisions of Sections 2C.2(8) to (12) Contemporaneous with or following completion of a Qualifying Acquisition, the Listed Issuer may raise additional funds in accordance with Policy 6 of the Policies.
- (2) A SPAC may only raise additional funds pursuant to the issuance or potential issuance of Equity Securities from treasury pursuant to Section 2C.3(1) of this Appendix to fund a Qualifying Acquisition and/or administrative expenses of the Listed Issuer.

### *Other Requirements*

- (3) Prior to completion of its Qualifying Acquisition, in addition to this Appendix, the Listed Issuer will be subject to the following CSE Policies:
  - (a) Sections 2.6 to 2.18 of Policy 2;
  - (b) Policy 3;
  - (c) Policy 4;
  - (d) Policy 5;
  - (e) Policy 6;
  - (f) Policy 9; and
  - (g) Applicable listing fees and forms.

Until completion of a Qualifying Acquisition, a SPAC may only issue and make Equity Securities issuable in accordance with Sections 2C.3(1) and (2) of this Appendix.

## **2C.4 Completion of a Qualifying Acquisition**

### *Permitted Time for Completion of a Qualifying Acquisition*

- (1) A SPAC must complete a Qualifying Acquisition within 36 months of the date of closing of the distribution under its IPO prospectus or complete a liquidation distribution pursuant to 2C.5. Where the Qualifying Acquisition is comprised of more than one acquisition, the SPAC must complete each of the acquisitions comprising the Qualifying Acquisition within 36 months of the date of closing of the distribution under its IPO prospectus, in addition to meeting the requirements of Section 2C.4(2).

### *Value of a Qualifying Acquisition*

- (2) The businesses or assets forming the Qualifying Acquisition must have an aggregate fair market value equal to at least 80% of the aggregate amount then on deposit in the escrow account, excluding deferred underwriting commissions held in escrow and any

taxes payable on the income earned on the escrowed funds. Where the Qualifying Acquisition is comprised of more than one acquisition, and the multiple acquisitions are required to satisfy the aggregate fair market value of a Qualifying Acquisition, these acquisitions must close concurrently and within the time frame in Section 2C.4(1).

### *Approvals*

- (3) The Qualifying Acquisition must be approved by:
  - (a) a majority of directors unrelated to the Qualifying Acquisition; and
  - (b) a majority of the votes cast by shareholders of the SPAC at a meeting duly called for that purpose.

Shareholder approval of the Qualifying Acquisition is not required where the Listed Issuer has placed 100% of the gross proceeds raised in its IPO and any additional equity raised pursuant to Section 2C.3(1) in escrow in accordance with Section 2C.2(8). The shareholder approval requirements set out in Sections 8.6 and 8.9 of Policy 8 will not apply to transactions concurrently effected with the Qualifying Acquisition, provided that they are disclosed in the prospectus for the resulting issuer and shareholder approval is not otherwise required for the Qualifying Acquisition. Where the Qualifying Acquisition is comprised of more than one acquisition, each acquisition must be approved.

- (4) The IPO prospectus must disclose whether shareholder approval will be required as a condition of the completion of the Qualifying Acquisition and the shareholders entitled to vote upon the matter. If a Qualifying Acquisition is subject to shareholder approval, the Listed Issuer must prepare an information circular containing disclosure of the resulting issuer assuming completion of the Qualifying Acquisition. This information circular must be submitted to the Exchange for pre-clearance prior to distribution.
- (5) The Listed Issuer may impose additional conditions on the completion of a Qualifying Acquisition, provided that the conditions are described in the prospectus or information circular describing the Qualifying Acquisition. For example, a SPAC may impose a condition not to proceed with a proposed Qualifying Acquisition if more than a pre-determined percentage of public shareholders exercise their redemption rights.
- (6) In accordance with Section C2.6, holders of shares other than SPAC Builder Shares must be entitled to redeem their shares for their pro rata portion of the escrowed funds in the event that the Qualifying Acquisition is completed. Subject to applicable laws, shareholders who exercise their redemption rights shall be paid within 30 calendar days of completion of the Qualifying Acquisition and such redeemed shares shall be cancelled.

### *Prospectus Requirement for Qualifying Acquisition*

- (7) A prospectus must be filed containing disclosure regarding the SPAC and its proposed Qualifying Acquisition with the Securities Regulatory Authority in each jurisdiction in which the SPAC and the resulting issuer is, and will be, a reporting issuer assuming completion of the Qualifying Acquisition and, if applicable, in the jurisdiction in which the head office of the resulting issuer assuming completion of the Qualifying Acquisition is located in Canada. Completion of the Qualifying Acquisition without a receipt for the final prospectus will result in the delisting from the Exchange.

If a Qualifying Acquisition is subject to shareholder approval, the SPAC must obtain a receipt for its final prospectus from the applicable Securities Regulatory Authorities prior to mailing the information circular described in Section 2C.4(4).

If a Qualifying Acquisition is not subject to shareholder approval, the SPAC must: (i) mail a notice of redemption to shareholders and make its final prospectus publicly available on its website at least 21 days prior to the deadline for redemption; and (ii) send by prepaid mail or otherwise physically deliver the prospectus to shareholders no later than midnight (Toronto time) on the second Business Day prior to the deadline for redemption. The notice of redemption must be pre-cleared by CSE prior to mailing.

Exchange discretion with respect to the requirements of this Section may only be exercised after discussions with, and the concurrence of, the OSC and BCSC.

#### *Exchange Approval*

- (8) The Listed Issuer resulting from the completion of the Qualifying Acquisition by the SPAC must meet the Exchange's original Listing requirements for an NV Issuer set out in Policy 2. The Exchange will provide the Listed Issuer with up to 90 days from the completion of the Qualifying Acquisition to provide evidence that it meets the requirements set out in s. 2A.1(1), failing which the Listed Issuer will generally be subject to Policy 3.

Failure to obtain the Exchange's approval of the Listing of the resulting Listed Issuer prior to the completion of the Qualifying Acquisition will result in delisting. For greater certainty, a Qualifying Acquisition may include a merger or other reorganization or an acquisition of the Listed Issuer by a third party.

#### *Escrow Requirements*

- (9) Upon completion of the Qualifying Acquisition, the resulting Listed Issuer shall be subject to the Exchange's escrow requirements outlined in s. 2A.5(8) and s. 8.8.

### **2C.5 Liquidation Distribution and Delisting Upon Failure to Meet Timelines for a Qualifying Acquisition**

- (1) If a SPAC fails to complete a Qualifying Acquisition within the permitted time set out in Section 2C.4(1), subject to applicable laws, it must complete a liquidation distribution within 30 calendar days of the end of such permitted time, pursuant to



which the escrowed funds must be distributed to the holders of shares other than SPAC Builder Shares on a pro rata basis, and in accordance with Section 2C.5(2).

- (2) In accordance with Section 2C.2(2), the Founding Security Holders may not participate in any liquidation (or redemption) distribution with respect to any of their SPAC Builder Shares. In addition, in accordance with Section 2C.2(11), all deferred underwriter commissions held in escrow will be part of the liquidation (or redemption) distribution. A liquidation (or redemption) distribution therefore includes the minimum of 90% of the gross proceeds raised in the Listed Issuer's IPO, as required under Section 2C.2(8) and 50% of the underwriters' commissions as described in this Section. Any interest or other proceeds earned through Permitted Investments that remains in escrow shall also be part of the liquidation (or redemption) distribution. The amount distributed on a liquidation distribution shall however be net of any applicable taxes and direct expenses related to the liquidation distribution.
- (3) If the Listed Issuer fails to complete a Qualifying Acquisition within the permitted time set out in Section 2C.4(1), the Exchange will delist the securities on or about the date on which the liquidation distribution is completed.

## **2C.6 Continued Listing Requirements Following Completion of a Qualifying Acquisition**

Upon completion of a Qualifying Acquisition pursuant to these requirements, the resulting Listed Issuer will be subject to all continued listing requirements in the Policies except where otherwise provided in Section 2C.4(8).

## **PART B: Documents required with application**

### **2C.7 Application**

- (1) The application for Listing must include the following:
  - (a) an Application Letter for Listing one or more specific classes of Equity Securities of the Listed Issuer and indicating the number and class of the Listed Issuer's securities issued and outstanding and, if convertible or exchangeable securities are issued and outstanding, the number and type of securities reserved for issuance;
  - (b) a completed Listing Application together with the supporting documentation set out in Appendix A to the Listing Application;
  - (c) a draft Listing Statement including financial statements approved by the Listed Issuer's Board or its audit committee;
  - (d) a duly executed PIF from each Related Person of the Issuer and, if any of these Persons is not an individual, a PIF from each director, senior officer and each Person who beneficially, directly or indirectly owns, controls or exercises direction over 20% or more of the voting rights of such non-individual;
  - (e) current insider reports from each Person required to file a PIF, as filed on SEDI; or confirmation that a SEDI profile has been created; or an undertaking to create such profile;
  - (f) if applicable, the escrow agreement required under paragraph 2.8 of Part A of this Appendix; and
  - (g) the relevant portion of the Listing Fees, plus applicable taxes.

This is Exhibit "C" referred to  
in the Affidavit of Paul Crath  
sworn May 8, 2023

*patrick corney*

---

A Commissioner for Oaths in and  
for the Province of Ontario

May 4, 2023

Mr. Paul Crath, CEO  
Plant-Based Investment Corp.  
240 Richmond St. W., Suite 4164  
Toronto, ON  
M5V 1V6

Mr. Graham Simmonds, Chairman  
Plant-Based Investment Corp.  
240 Richmond St. W., Suite 4164  
Toronto, ON  
M5V 1V6

Dear Paul and Graham,

Following recent discussions and events, I have concluded that Plant-Based Investment Corp. (the "Company") has fundamentally breached my Employment Agreement. Per the terms of that agreement, I am entitled to the timely payment of all unpaid wages as well as the termination payment set out in section 4.1(c) of my Employment Agreement. This is not a resignation of my employment as CFO. I have been constructively dismissed. The particulars of this termination, and some fundamental concerns about the Company, are set out below.

The Company has not paid any salary amounts since commencement of the Employment Agreement of June 1, 2021. I have inquired about payment on many occasions and have tried on numerous occasions to set a meeting to discuss payment and/ or payment arrangements, and have not received any meaningful feedback other than that the Company was facing short-term cash flow and was looking at various options for raising capital, but that I would ultimately be paid.

The Company's situation has deteriorated materially over the last few months. We could not file our audit and financial statements on time because the auditors had not been paid, despite my many pleas to you both going back months to have that issue addressed prior to the filing deadlines. As a result, the OSC issued a full cease trade order seriously compromising our ability to raise capital and thus the Company's viability. Ashish, the chair of the audit committee, then suddenly resigned from the board. Despite my position as director and CFO, I only learned after the fact that this had been discussed for some time. Unfortunately, this was part of a pattern on your part of failing to provide me with timely information which I needed to do my job.

On March 30<sup>th</sup>, Paul attempted to schedule a board meeting on less than 24 hours' notice to approve a financing, which, once I had a chance to review the loan agreement upon receipt the following day, appeared to include very aggressive financing terms. My written request for basic information such as planned use of funds, and basic controls such as who could authorize payments, as well as how the Company planned to repay the debt, were ignored. Instead, the loan funds were received into the Company's account without review or approval of terms by the board. My questions about these funds were not answered by you in a timely way. Incredibly, on April 5<sup>th</sup>, I discovered that you had engaged insolvency counsel (Larry Ellis) in February without advising the board or me as CFO. Unfortunately, this

simply compounded concerns I already had about governance and internal controls at the Company. As CFO and as a director, I could not reasonably be asked to approve this transaction without proper and necessary information.

On April 25, 2023, Sean Conacher and I called a board meeting for April 27<sup>th</sup>. I then received Paul's email of April 26<sup>th</sup> at 8:59 pm which is included in Exhibit H to his Affidavit in the CCAA proceedings. That email, which appears to me to have been written by counsel, advises for the first time that you took the position that Sean was no longer a director as of April 18<sup>th</sup>. That seemed odd to me and I remain unconvinced that that was legal. The email goes on to say that a group of shareholders were threatening me with a lawsuit for rejecting the financing "as CFO" and that they wished to speak to me. There was no explanation of exactly what they were told in this regard, but it would appear to have been in breach of internal and board confidentiality. In any event, I agreed to speak to the apparent shareholder litigant as you requested but I never heard about it again, either from you or from anyone else.

I note that you did not include my response of April 27<sup>th</sup> at 3:34 pm to Paul's April 26<sup>th</sup> email in the Court record so the judge could review it. I will leave it to your counsel and to the Monitor to determine if failing to include that communication was misleading.

On the morning of April 27<sup>th</sup>, I learned from Gowlings that Sean's resignation as director had not been released from escrow by them. I emailed you to postpone the board meeting until we could have certainty on who the directors were. You apparently proceeded anyway and I learned earlier this week through a press release that the Company is now under CCAA protection. I was not advised that was being considered, let alone actioned.

It would seem clear that the Company will not honour its obligations to me and it is no longer reasonable to rely on the prior assurances made to me regarding payment of amounts owed to me pursuant to my Employment Agreement. It should also be clear from the above that as CFO I have been undermined and cut out of many important decisions that a CFO would typically be an active participant in. I have absolutely no confidence that my skills and abilities will be used by the Company in a manner consistent with my judgement.

For the same reasons I also hereby tender my resignation as corporate secretary and board director, effective immediately.

Please understand that this is not a resignation of my CFO role. This is a constructive dismissal of my employment arising from the breaches of the Company. In the circumstances, it is my position that the Company owes me the following:

1. Unpaid wages for the period of June 1, 2021 to April 30, 2023, in the amount of \$230,000, being \$10,000 per month for 23 months; and
2. The payments mandated by section 4.1(c) of my Employment Agreement being the following:
  - a. a lump sum payment in the amount of \$120,000, being twelve (12) months of Base Salary;
  - b. payment of outstanding accrued but unused vacation.

Section 4.1(c) also contemplates payment of bonus amounts. It is my understanding that no bonuses have been, or will be, paid to any of the executives. If that is not the case, I reserve my right to also claim the bonus amounts contemplated in section 4.1(c).

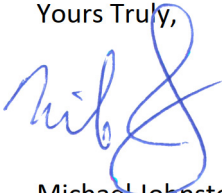
The payments set out in section 4.1(c) of my Employment Agreement were the agreed-upon amount of my damages if my employment was terminated by the Company. My employment has been terminated by the actions of the Company.

My counsel is reviewing the CCAA Order and will be in touch with respect to advancing my claims.

I understand that I remain an insured under the Company's D&O policy. I expect to be advised of any communication with the insurer that is relevant to my interests.

Given the Monitor's role in the CCAA proceeding, I am copying the Monitor and its counsel on this correspondence.

Yours Truly,



Michael Johnston

[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

[pgennis@spergel.ca](mailto:pgennis@spergel.ca)

[Clifton.prophet@gowlingwlg.com](mailto:Clifton.prophet@gowlingwlg.com)

This is Exhibit "D" referred to  
in the Affidavit of Paul Crath  
sworn May 8, 2023

*patrick corney*

---

A Commissioner for Oaths in and  
for the Province of Ontario

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



----- Forwarded message -----

From: **Mike Johnston** <[Mike@fa.ca](mailto:Mike@fa.ca)>

Date: Thu, Apr 27, 2023 at 3:34 PM

Subject: RE: Strictly Confidential

To: Paul Crath <[paulcrath@gmail.com](mailto:paulcrath@gmail.com)>

Cc: Graham Simmonds <[jgrahamsimmonds@gmail.com](mailto:jgrahamsimmonds@gmail.com)>

Hi Paul,

With respect to the claims that I, as CFO, rejected the loan, I did not reject the loan. The term sheet was brought to the Board for approval. Prior to receiving the term sheet, when we were notified of a Board meeting scheduled for the following day to approve the term sheet, I asked specific questions as a director about the loan which remain unanswered. As a director, I was hesitant to approve the loan that was secured and that would rank ahead of other creditors without a detailed repayment plan. This plan was never provided despite my requests. As a director, I felt I have a fiduciary duty to understand the full plan for use of proceeds and the repayment plan before committing to a secured debt. My understanding is that the Board of Directors did not approve the loan and the claims that I rejected the loan as CFO are false. I was asked to approve the term sheet as a director and asked questions as a director which were not answered and I was not consulted as CFO. The term sheet was presented to me as a director and that was the first I saw of the term sheet.

I have not made any claims to any creditors or any other parties that you have resigned as a director or CEO. I would not tell someone that if it is not true. I have not shared any confidential information with anyone outside the Company and will continue in this manner.

I have not provided any instructions to any of PBIC's legal counsel, nor am I involved in any of the current legal matters with respect to strategy, etc. Furthermore, I've never been consulted about the legal matters.

Mike

From: Paul Crath <[paulcrath@gmail.com](mailto:paulcrath@gmail.com)>

Sent: Wednesday, April 26, 2023 8:59 PM

To: Mike Johnston <[Mike@fa.ca](mailto:Mike@fa.ca)>

Cc: Graham Simmonds <[jgrahamsimmonds@gmail.com](mailto:jgrahamsimmonds@gmail.com)>

Subject: Strictly Confidential

Hi Mike,

Further to your e-mail requesting a Board meeting, we need to clarify some points for the record in advance of that meeting.

1. Sean is not a director, officer, or employee of PBIC and accordingly I have removed him from this thread. Attached to this email is Sean's resignation as director. As you know, Sean/his company received 15,825,000 shares in Grown Rogue with a current market value of approx.\$2.7 million as consideration for his resignation as director from PBIC. Additional material value was paid as additional consideration to cover legal fees and other fees/expenses to make Sean's director resignation effective. PBIC has received the opinion from two independent law firms confirming that Sean is not a director of PBIC. To clarify any confusion Sean may have, we will send Sean a letter tonight confirming that all the conditions precedent to effect his resignation have been met, and his resignation is final and effective as at April 18, 2023.

Also attached is Sean's April 14, 2023 letter whereby Sean advised us he is no longer an officer of PBIC. Please note that pursuant to Sean's April 14 letter, he has put PBIC on notice of his intention to sue the Company for an amount in the millions of dollars.

Despite Sean not being a fiduciary to the Company, and Sean having advised that he is acting averse to PBIC, you have continuously shared confidential information with Sean and now propose to invite him to a directors meeting. Sean has no business being at such a meeting.

To confirm, Graham and I agree to attend your proposed virtual directors meeting at 11:00 am tomorrow (unless this time has been moved to 1:30 pm in your later correspondence) please advise. Importantly, Sean, who is a potential litigant against the Company and has no role with the company, cannot attend. Please confirm you will cease sharing any confidential PBIC information with Sean, including with respect to this letter and with respect to the Board meeting you have called. This letter and the Board meeting are confidential information for PBIC Board members and their advisors.

2. I have been put on notice that a group of shareholders have retained counsel to initiate inquiries as to why you, as CFO, rejected a loan that would have given PBIC the ability to pay critical vendors, avoid potential imminent litigation, and to give the Company the opportunity to find a new debt or equity partner.

The group of shareholders represents approximately 20% of PBIC's outstanding shares. The lead representative of the group is aware of your actions because he is part of the group that introduced us to Des and lined up the critical loan that would have provided the Company with liquidity to operate. I have asked the lead representative if he would give you the chance to explain your rationale before initiating any lawsuit. He is available tonight or tomorrow morning to speak with you but thereafter he is handing it to the lawyers. Please confirm your availability for a call.

3. You have referenced on a number of occasions that creditors are threatening to sue not only PBIC, but me personally. You have consistently and recently used threats of litigation as a tool to cause me to resign. In this pursuit I am concerned you have been involved in sharing confidential PBIC information with creditors and have asked that such creditors contact me personally to threaten me and demand my resignation.

As it turns out, I have spoken with our creditors on many occasions, which is a very sensitive task based on our liquidity management. To date none were interested in pursuing litigation, but instead wanted a reasonable payment plan that we could stick to. There is only one creditor with a smaller cash claim that has suggested that I resign. Curiously two creditors told me they had been told I had resigned. One said he understood I had resigned and that you and Sean and "a new CEO" are going to run the Company on a go forward basis.

As CFO you owe a duty to the Company. Please cease and desist from sharing confidential information with creditors and being involved in any third-party discussions pressuring creditors to pursue litigation against the Company or any of the directors. Any actions of this sort are potentially very prejudicial, are not in good faith, nor are they acting in the best interest of the Company.

4. As the CEO I need to manage our litigation and other legal files. Any instructions or matters discussed with PBIC's lawyers has always included me, and must continue to include me. As CFO it is not your role or responsibility to deal with the legal matters of the Company without my direct involvement and oversight.

Please cease and desist from any communications with lawyers on behalf of the Company without my involvement. I will be writing to counsel for PBIC to advise that they are not to take instruction from you, as you do not have this authority without my involvement to make legal decisions for the Company. If you wish to use lawyers, you can hire them in your personal capacity and they will have to be lawyers not currently representing PBIC. I am concerned you have created a potential conflict of interest for our existing counsel if you have been providing instructions without my knowledge or consent.

5. Finally, after a lot of effort I found PBIC a lifeline loan to help protect creditors and shareholders. You insisted we reject this loan leaving the Company financially vulnerable. I have repeatedly asked for an alternative solution from you, but none has been presented or discussed with us to date. At the Board meeting tomorrow, please advise if you have any alternatives to fund our creditors and create liquidity for the Company.

In reviewing the above, please consider your role and duties as CFO and a member of the Board.

Please circulate a confirmed appointment time for your proposed Board meeting to Graham and me only.

Thanks,

Paul

-----  
[EXTERNAL EMAIL / COURRIEL EXTERNE]

Please report any suspicious attachments, links, or requests for sensitive information.

Veillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspectes.

-----

This is Exhibit "E" referred to  
in the Affidavit of Paul Crath  
sworn May 8, 2023

*patrick corney*

---

A Commissioner for Oaths in and  
for the Province of Ontario

## RELIEF FROM REPORTING OBLIGATIONS

**THIS COURT ORDERS** that the decision by the Applicant to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents and, ~~restatements, amendments to existing filings~~, press releases ~~or any other actions~~ (collectively, the “**Securities Filings**”) that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the “**Securities Provisions**”), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicant failing to make any Securities Filings required by the Securities Provisions, ~~during the Stay Period.~~

**THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicant nor the Monitor shall have any personal liability for any failure by the Applicant to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicant.

This is Exhibit "F" referred to  
in the Affidavit of Paul Crath  
sworn May 8, 2023

*patrick corney*

---

A Commissioner for Oaths in and  
for the Province of Ontario




Government  
of Canada

Gouvernement  
du Canada

[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#) → [Corporations Canada](#)

→ [Search for a Federal Corporation](#)

## Federal Corporation Information - 1047092-9

 Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

### Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)

### Corporation Number

1047092-9

### Business Number (BN)

787649888RC0001

### Corporate Name

PLANT-BASED INVESTMENT CORP.

### Status

Active

### Governing Legislation

*Canada Business Corporations Act - 2017-10-29*

[Order a Corporate Profile](#) [[View PDF Sample](#)] [[View HTML Sample](#)].

## Registered Office Address

340 Richmond Street West  
Toronto ON M5V 1X2  
Canada

**i Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Directors****Minimum** 3**Maximum** 6

Mike Johnston  
1601 Kenmuir Avenue  
Mississauga ON L5G 4B6  
Canada

Paul Crath  
20 Scrivener Square  
Toronto ON M4W 3X9  
Canada

Sean Conacher  
240 Richmond Street West  
Toronto ON M5V 1V6  
Canada

Graham Simmonds  
134 Kitzbuhl Crescent  
The Blue Mountains ON L9Y 0S5  
Canada

Gerald Goldberg  
217 Queen Street West  
Suite 401  
Toronto ON M5V 0R2  
Canada

**i Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the



corporation or contact [Corporations Canada](#). We will inform the corporation of its [reporting obligations](#).

## Annual Filings

### Anniversary Date (MM-DD)

10-29

### Date of Last Annual Meeting

2021-05-27

### Annual Filing Period (MM-DD)

10-29 to 12-28

### Type of Corporation

Distributing corporation

### Status of Annual Filings

2023 - Not due

2022 - Overdue

2021 - Filed

## Corporate History

### Corporate Name History

2017-10-29 to 2021-01-15	Cannabis Growth Opportunity Corporation
--------------------------	---

2021-01-15 to Present	PLANT-BASED INVESTMENT CORP.
-----------------------	------------------------------

### Certificates and Filings

#### Certificate of Incorporation

2017-10-29

#### Certificate of Amendment \*

2017-11-24

Amendment details: Number of directors

#### Certificate of Amendment \*

2020-05-06

Amendment details: Number of directors

**Proxy circular**

As of 2020-03-31

**Certificate of Amendment** \*

2021-01-15

Amendment details: Corporate name

**Proxy circular**

As of 2021-05-27

\* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. For more information, [contact Corporations Canada](#).

[Order copies of corporate documents](#)[Start New Search](#)[Return to Search Results](#)**Date Modified:**

2023-02-10

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

Court File No CV-23-00698826-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

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

Proceedings commenced at Toronto

**AFFIDAVIT OF PAUL CRATH  
(SWORN MAY 8, 2023)**

**MILLER THOMSON LLP**

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

**Larry Ellis LSO# 49313K**

[lellis@millერთhompson.com](mailto:lellis@millერთhompson.com)

Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**

[pcorney@millერთhompson.com](mailto:pcorney@millერთhompson.com)

Tel: 416.595.8555

**James W. Reid LSA#: 18109**

[jwreid@millერთhompson.com](mailto:jwreid@millერთhompson.com)

Tel: 403.298.2418

Lawyers for the Applicant

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	<b>THURSDAY, THE 11<sup>TH</sup></b>
	)	
JUSTICE CONWAY	)	<b>DAY OF MAY, 2023</b>

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.**

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by Plant-Based Investment Corp. (“**PBIC**” or the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day by Zoom video conference.

**ON READING** the affidavit of Paul Crath sworn April 28, 2023 (the “**First Crath Affidavit**”), the affidavit of Paul Crath sworn May 8, 2023 (the “**Second Crath Affidavit**”), and the Exhibits thereto, and on hearing the submissions of counsel to PBIC and counsel to msi Spergel inc., the monitor of the Applicant (in such capacity, the “**Monitor**”):

**SERVICE**

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

**DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the First Crath Affidavit and the Second Crath Affidavit.

## **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, contractors, advisors, consultants, agents, experts, accountants, counsel, and such other persons (collectively, “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the central cash management system currently in place as described in the Initial Crath Affidavit or, with the consent of the Monitor, replace it with another central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an

unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order to the extent that such expenses are incurred and payable by the Applicant:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect

of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, monthly on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.



## **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$200,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **STAY OF PROCEEDINGS**

15. **THIS COURT ORDERS** that until and including June 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees, directors, advisors, officers, and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant, or its employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits, or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform, any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the prior written consent of the Applicant and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the Applicant shall be or shall be deemed to be negated, suspended, waived, and/or terminated as a result of this Order.

### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, banking services, payroll and benefit services, insurance, transportation services, utility, or other services to the Business of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## **APPOINTMENT OF MONITOR**

21. **THIS COURT ORDERS** that msi Spergel Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the DIP Lender and its counsel of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicant in its preparation of the Applicant’s cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors’ or shareholders’ meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant’s business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) be at liberty to serve as a “foreign representative” of the Applicant in any proceeding outside of Canada;
- (j) assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced in relation to the Applicant; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

24. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or 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 (collectively, the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

26. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to, the date of this Order by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay

the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicant on a weekly basis.

28. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADMINISTRATION CHARGE**

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

#### **DIP FINANCING**

30. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility the (“**DIP Loan**”) from 1000492681 Ontario Inc. (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$500,000 advanced to the Applicant under the DIP Loan (plus interest, fees and expenses in accordance with the DIP Term Sheet (as defined below)) unless permitted by further Order of this Court.

31. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicant and the DIP Lender dated as of April 27, 2023 (the “**DIP Term Sheet**”), filed.

32. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, with the DIP Term Sheet, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably

required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 36 and 38 hereof.

34. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon five (5) business days’ written notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents, and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.



35. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender’s Charge, as among them, shall be as follows:

- (a) First - Administration Charge (to the maximum amount of \$250,000); and
- (b) Second – DIP Lender’s Charge (to the maximum aggregate amount advanced under the DIP Loan, inclusive of interest, fees and expenses in accordance with the DIP Term Sheet).

37. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors’ Charge, the Administration Charge, or the DIP Lender’s Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender’s Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person.

39. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender, and the beneficiaries of the Directors’ Charge and the Administration Charge, or further Order of this Court.

40. **THIS COURT ORDERS** that the Administration Charge, the Definitive Documents and the DIP Lender’s Charge shall not be rendered invalid or unenforceable and the rights and remedies

of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to 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**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery, or performance of the Definitive Documents; and
  - (i) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

#### **RELIEF FROM REPORTING OBLIGATIONS**

42. **THIS COURT ORDERS** that the decision by the Applicant to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents and, press releases or any other actions (collectively, the

“**Securities Filings**”) that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the Securities Act (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the “**Securities Provisions**”), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicant failing to make any Securities Filings required by the Securities Provisions.

43. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicant nor the Monitor shall have any personal liability for any failure by the Applicant to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicant.

#### **SERVICE AND NOTICE**

44. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA (the “**CCAA Notice**”); and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicant’s books and records), a notice to all known creditors having a claim against the Applicant of more than \$1,000, and (iii) prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

45. **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/eservice-commercial/>) 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://www.spergelcorporate.ca/engagements/plant-based-investment-corp> (the “**Monitor’s Website**”).

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicant’s creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicant and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third (3<sup>rd</sup>) business day following the date of forwarding thereof, if sent by ordinary mail.

47. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicant’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

## GENERAL

48. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order, or apply for advice and directions in the discharge of their respective powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. **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 Applicant, the Monitor, 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 orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that the Applicant and the Monitor 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, and that the Monitor 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.

52. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

54. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

---

Justice Conway

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c.C-36 AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF PLANT-BASED INVESTMENT CORP. *et al.*

Court File No CV-23-00698826-00CL

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED**  
**INITIAL ORDER**

**MILLER THOMSON LLP**

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

**Larry Ellis LSO# 49313K**

[lellis@millerthomson.com](mailto:lellis@millerthomson.com)  
Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**

[pcorney@millerthomson.com](mailto:pcorney@millerthomson.com)  
Tel: 416.595.8555

**James W. Reid LSA#: 18109**

[jwreid@millerthomson.com](mailto:jwreid@millerthomson.com)  
Tel: 403.298.2418

Lawyers for the Applicant

# TAB 4



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) ~~MONDAY~~THURSDAY, THE ~~1<sup>ST</sup>~~11<sup>TH</sup>  
JUSTICE CONWAY )  
DAY OF MAY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Plant-Based Investment Corp. ("PBIC" or the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by Zoom video conference.

ON READING the affidavit of Paul Crath sworn April 28, 2023 (the "First Crath Affidavit"), the affidavit of Paul Crath sworn May 8, 2023 (the "Second Crath Affidavit"), and the Exhibits thereto (~~the "Initial Crath Affidavit"~~), and on hearing the submissions of counsel to PBIC; and ~~on reading the consent of counsel to~~ msi Spergel inc. to act as, the ~~proposed~~ monitor of the Applicant (in such capacity, the "Monitor");:

SERVICE

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

## DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the ~~Initial~~First Crath Affidavit and the Second Crath Affidavit.

## APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “Plan”).

## POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, contractors, advisors, consultants, agents, experts, accountants, counsel, and such other persons (collectively, “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the central cash management system currently in place as described in the Initial Crath Affidavit or, with the consent of the Monitor, replace it with another central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety,

validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. ~~6.~~ **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order to the extent that such expenses are incurred and payable by the Applicant:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. ~~8.~~ **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, ~~twice-monthly in equal payments~~ on the first ~~and fifteenth~~ day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$200,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “Restructuring”).

13. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such

secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **STAY OF PROCEEDINGS**

15. ~~11.~~ **THIS COURT ORDERS** that until and including ~~May 11~~ June 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees, directors, advisors, officers, and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant, or its employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. ~~12.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and

suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits, or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

17. ~~13.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform, any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the prior written consent of the Applicant and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the Applicant shall be or shall be deemed to be negated, suspended, waived, and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

18. ~~14.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, banking services, payroll and benefit services, insurance, transportation services, utility, or other services to the Business of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

19. ~~15.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**APPOINTMENT OF MONITOR**

21. ~~17.~~ **THIS COURT ORDERS** that msi Spergel ~~inc~~Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. ~~18.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;



- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the DIP Lender and its counsel of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) ~~(e)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) ~~(f)~~ be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) be at liberty to serve as a "foreign representative" of the Applicant in any proceeding outside of Canada;
- (j) assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced in relation to the Applicant; and

(k) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time to time.

23. ~~19.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

24. ~~20.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or 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 (collectively, the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~21.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

26. ~~22.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. ~~23.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to, the date of this Order by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicant on a weekly basis.

28. ~~24.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADMINISTRATION CHARGE**

29. ~~25.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$~~100,000~~250,000, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~32~~36 and ~~34~~38 hereof.

#### **DIP FINANCING**

30. ~~26.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility the (“**DIP Loan**”) from 1000492681 Ontario Inc. (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~200,000~~500,000 advanced to the Applicant under the DIP Loan (plus

interest, fees and expenses in accordance with the DIP Term Sheet (as defined below)) unless permitted by further Order of this Court.

31. ~~27.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicant and the DIP Lender dated as of April 27, 2023 (the “**DIP Term Sheet**”), filed.

32. ~~28.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, with the DIP Term Sheet, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. ~~29.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs ~~32~~36 and ~~34~~38 hereof.

34. ~~30.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon five (5) business days’ written notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents, and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicant and set off and/or

consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

35. ~~31.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. ~~32.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

- (a) First - Administration Charge (to the maximum amount of \$~~100,000~~250,000); and
- (b) Second – DIP Lender's Charge (to the maximum aggregate amount advanced under the DIP Loan, inclusive of interest, fees and expenses in accordance with the DIP Term Sheet).

37. ~~33.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. ~~34.~~ **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

39. ~~35.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

40. ~~36.~~ **THIS COURT ORDERS** that the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to 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**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery, or performance of the Definitive Documents; and

- (i) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. ~~37.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

### RELIEF FROM REPORTING OBLIGATIONS

42. THIS COURT ORDERS that the decision by the Applicant to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents and, press releases or any other actions (collectively, the "Securities Filings") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the Securities Act (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the "Securities Provisions"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicant failing to make any Securities Filings required by the Securities Provisions.

43. THIS COURT ORDERS that none of the directors, officers, employees, and other representatives of the Applicant nor the Monitor shall have any personal liability for any failure by the Applicant to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicant.

**SERVICE AND NOTICE**

44. ~~38.~~ **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA (the “**CCAA Notice**”); and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicant’s books and records), a notice to all known creditors having a claim against the Applicant of more than \$1,000, and (iii) prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

45. ~~39.~~ **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/eservice-commercial/>) 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:

[www.spergelcorporate.ca/engagements](http://www.spergelcorporate.ca/engagements)<https://www.spergelcorporate.ca/engagements/plant-based-investment-corp> (the “**Monitor’s Website**”).

46. ~~40.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicant’s creditors or other interested parties at their respective addresses (including



e-mail addresses) as last shown in the books and records of the Applicant and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third (3<sup>rd</sup>) business day following the date of forwarding thereof, if sent by ordinary mail.

47. ~~41.~~ **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

### **COMEBACK HEARING**

~~42. — THIS COURT ORDERS that the comeback motion in these CCAA proceedings shall be heard on or before May 11, 2023 (the "Comeback Hearing").~~

### **GENERAL**

48. ~~43.~~ **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order, or apply for advice and directions in the discharge of their respective powers and duties hereunder.

49. ~~44.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. ~~45.~~ **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 Applicant, the Monitor, 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 orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. ~~46.~~ **THIS COURT ORDERS** that the Applicant and the Monitor 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, and that the Monitor 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.

52. ~~47.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. ~~48.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

54. ~~49.~~ **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

---

~~Madame~~ Justice Conway

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c.C-36 AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF PLANT-BASED INVESTMENT CORP. *et al.*

Court File No CV-23-00698826-00CL

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED**  
**INITIAL ORDER**

**MILLER THOMSON LLP**

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

**Larry Ellis LSO# 49313K**

[lellis@millerthomson.com](mailto:lellis@millerthomson.com)

Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**

[pcorney@millerthomson.com](mailto:pcorney@millerthomson.com)

Tel: 416.595.8555

**James W. Reid LSA#: 18109**

[jwreid@millerthomson.com](mailto:jwreid@millerthomson.com)

Tel: 403.298.2418

Lawyers for the Applicant

Document comparison by Workshare Compare on Monday, May 8, 2023 4:55:37 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/69445587/7
Description	#69445587v7<Legal> - Initial Order
Document 2 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/69478236/5
Description	#69478236v5<Legal> - Draft Amended and Restated Initial Order
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved-deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	106
Deletions	81
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	187

# TAB 5

Revised: January 21, 2014

Court File No. — CV-23-00698826-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) ~~WEEKDAY~~ THURSDAY, THE # 11<sup>TH</sup>  
JUSTICE — CONWAY ) ~~DAY OF MONTH, 20YR~~ MAY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
[APPLICANT'S NAME] (the "Applicant") PLANT-BASED INVESTMENT CORP.

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Plant-Based Investment Corp. ("PBIC" or the "Applicant"), pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ by Zoom video conference.

ON READING the affidavit of [NAME] Paul Crath sworn [DATE] April 28, 2023 (the "First Crath Affidavit"), the affidavit of Paul Crath sworn May 8, 2023 (the "Second Crath Affidavit"), and the Exhibits thereto, and on ~~being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on~~ hearing the submissions of counsel ~~for [NAMES], no one appearing for [NAME]<sup>†</sup> although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading~~ to PBIC and counsel to msi Spergel inc., the consent monitor of [MONITOR'S NAME] to act as the Applicant (in such capacity, the "Monitor,"):

SERVICE

<sup>†</sup> ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~Motion and the ~~Application~~Motion Record is hereby abridged and validated<sup>2</sup> so that this ~~Application~~Motion is properly returnable today and hereby dispenses with further service thereof.

## DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the First Crath Affidavit and the Second Crath Affidavit.

## APPLICATION

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

4. ~~3.~~ **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

## POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant ~~is~~shall be authorized and empowered to continue to retain and employ the employees, contractors, advisors, consultants, agents, experts, accountants, counsel, and such other persons (collectively

---

<sup>2</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~



"Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the Applicant shall be entitled to continue to ~~utilize~~use the central cash management system<sup>3</sup> currently in place as described in the Initial Crath Affidavit of [NAME] sworn [DATE] ~~or~~or, with the consent of the Monitor, replace it with another ~~substantially similar~~ central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.}]

7. ~~6.~~ **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order to the extent that such expenses are incurred and payable by the Applicant:

- (a) all outstanding and future wages, salaries, employee ~~and pension~~ benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses ~~payable on or after the date of this Order,~~ in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses; and

<sup>3</sup> ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant ~~in respect of these proceedings~~, at their standard rates and charges.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. ~~8.~~ **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not ~~required to be~~ remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for resiliated~~<sup>4</sup> in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, ~~twice-monthly in equal payments~~ on the first ~~and fifteenth~~ day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. ~~11.~~ **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its~~their business or operations; ~~†~~ and to dispose of redundant or non-material assets not exceeding \$●100,000 in any one transaction or \$●200,000 in the aggregate~~‡~~<sup>5</sup>;

<sup>4</sup> ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

<sup>5</sup> ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred~~

- (b) ~~terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate~~; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

13. ~~12.~~ **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims ~~for resiliates~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the

~~36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NOSTAY OF PROCEEDINGS ~~AGAINST THE APPLICANT OR THE PROPERTY~~**

15. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE—MAX. 30 DAYS]~~ June 9, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees, directors, advisors, officers, and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant, or its employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

16. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits, or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## NO INTERFERENCE WITH RIGHTS

17. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform, any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the prior written consent of the Applicant and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the Applicant shall be or shall be deemed to be negated, suspended, waived, and/or terminated as a result of this Order.

## CONTINUATION OF SERVICES

18. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, ~~centralized~~-banking services, payroll and benefit services, insurance, transportation services, utility, or other services to the Business ~~or~~ of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

## NON-DEROGATION OF RIGHTS

19. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~ leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in ~~this Order shall derogate from the rights conferred and obligations imposed by the CCAA. Since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example,~~

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### ~~DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE~~

~~20. — THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~21. — THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.~~

---

~~number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

~~<sup>7</sup>The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~<sup>8</sup>Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

~~22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.~~

## APPOINTMENT OF MONITOR

21. ~~23.~~ THIS COURT ORDERS that ~~[MONITOR'S NAME]~~ msi Spergel Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. ~~24.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the DIP Lender and its counsel ~~on a [TIME INTERVAL] basis~~ of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed



with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, ~~but not less than [TIME INTERVAL], or as otherwise~~ agreed to by the DIP Lender;

- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) be at liberty to serve as a "foreign representative" of the Applicant in any proceeding outside of Canada;
- (j) assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced in relation to the Applicant; and
- (k) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

23. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

24. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

26. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to, the date of this Order by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and

directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicant on a ~~[TIME INTERVAL]~~ weekly basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$●-[, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

28. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

### ADMINISTRATION CHARGE

29. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and counsel to the Applicant's ~~counsel~~ shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●250,000, as security for their professional fees and disbursements incurred at ~~the~~ their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~ 36 and ~~{40}~~ 38 hereof.

### **DIP FINANCING**

30. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility the ("DIP Loan") from ~~{DIP LENDER'S NAME}~~ 1000492681 Ontario Inc. (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$●500,000 advanced to the Applicant under the DIP Loan (plus interest, fees and expenses in accordance with the DIP Term Sheet (as defined below)) unless permitted by further Order of this Court.

31. ~~33.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ DIP Term Sheet between the Applicant and the DIP Lender dated as of ~~{DATE}~~ April 27, 2023 (the "Commitment Letter" "DIP Term Sheet"), filed.

32. ~~34.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, with the "DIP Term Sheet, the "Definitive Documents""), as are contemplated by the ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. ~~35.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~38~~36 and ~~40~~38 hereof.

34. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ~~five (5) business days' written~~ five (5) business days' written notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the ~~Commitment Letter~~DIP Term Sheet, Definitive Documents, and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the ~~Commitment Letter~~DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

35. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. ~~38.~~ **THIS COURT ORDERS** that the priorities of ~~the Directors' Charge,~~ the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows<sup>9</sup>:

(a) First ~~—~~ Administration Charge (to the maximum amount of \$~~●~~250,000); and

(b) Second ~~—~~ DIP Lender's Charge; ~~and~~

~~Third — Directors' Charge~~ (to the maximum aggregate amount ~~of \$●~~advanced under the DIP Loan, inclusive of interest, fees and expenses in accordance with the DIP Term Sheet).

37. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

---

<sup>9</sup>~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

38. ~~40.~~ **THIS COURT ORDERS** that each of ~~the Directors' Charge,~~ the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

39. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

40. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter,~~ the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to 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") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~ DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the ~~Commitment Letter~~ DIP Term Sheet, the creation of the Charges, or the execution, delivery, or performance of the Definitive Documents; and
- (i) ~~(e)~~ the payments made by the Applicant pursuant to this Order, the ~~Commitment Letter~~ DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### RELIEF FROM REPORTING OBLIGATIONS

42. THIS COURT ORDERS that the decision by the Applicant to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents and, press releases or any other actions (collectively, the "Securities Filings") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the Securities Act (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the "Securities Provisions"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicant failing to make any Securities Filings required by the Securities Provisions.

43. THIS COURT ORDERS that none of the directors, officers, employees, and other representatives of the Applicant nor the Monitor shall have any personal liability for any failure by the Applicant to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicant.

## SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall ~~(i)~~ without delay, publish in ~~[newspapers specified by the Court]~~ the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, ~~(the “CCAA Notice”); and~~ ~~(ii)~~ within five (5) days after the date of this Order, ~~(A)~~ make this Order publicly available in the manner prescribed under the CCAA, ~~(B)~~ send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicant’s books and records), a notice to ~~every~~ all known ~~creditor who has~~ creditors having a claim against the Applicant of more than ~~\$1000~~ 1,000, and ~~(C)~~ prepare a list showing the names and addresses of ~~those~~ such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

45. **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/~~ http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) 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~~ case website shall be established in accordance with the Protocol with the following URL ~~“@”~~: https://www.spergelcorporate.ca/engagements/plant-based-investment-corp (the “**Monitor’s Website**”).

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicant and the Monitor are 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 or electronic message to the Applicant's creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown ~~on~~in the books and records of the Applicant and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery-~~or~~, facsimile transmission shall be deemed to be received or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the next~~third (3<sup>rd</sup>)~~ business day following the date of forwarding thereof,~~or if sent by ordinary mail, on the third business day after mailing.~~

47. THIS COURT ORDERS that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

## GENERAL

48. 47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order, or apply for advice and directions in the discharge of ~~its~~their respective powers and duties hereunder.

49. 48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. 49. 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 Applicant, the Monitor, 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 orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. ~~50.~~ **THIS COURT ORDERS** that ~~each of~~ the Applicant and the Monitor be at liberty and ~~is~~ 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, and that the Monitor 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.

52. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

---

54. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Justice Conway

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PLANT-BASED INVESTMENT CORP. et al.

Court File No CV-23-00698826-00CL

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED**  
**INITIAL ORDER**

**MILLER THOMSON LLP**

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

**Larry Ellis LSO# 49313K**

lellis@millerthomson.com  
Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**

pcorney@millerthomson.com  
Tel: 416.595.8555

**James W. Reid LSA#: 18109**

jwreid@millerthomson.com  
Tel: 403.298.2418

Lawyers for the Applicant

Document comparison by Workshare Compare on Monday, May 8, 2023 4:58:12 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/69486401/1
Description	#69486401v1<Legal> - 68672874_1_Model Order
Document 2 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/69478236/5
Description	#69478236v5<Legal> - Draft Amended and Restated Initial Order
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved-deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	295
Deletions	264
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	563

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

Court File No CV-23-00698826-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PLANT-BASED INVESTMENT CORP.

Applicant

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

Proceedings commenced at Toronto

**MOTION RECORD OF THE APPLICANT**  
**(re Comeback Hearing)**  
**(Returnable May 11, 2023)**

**MILLER THOMSON LLP**

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

**Larry Ellis LSO# 49313K**

[lellis@millერთhompson.com](mailto:lellis@millერთhompson.com)

Tel: 416.595.8639

**Patrick Corney LSO#: 65462N**

[pcorney@millერთhompson.com](mailto:pcorney@millერთhompson.com)

Tel: 416.595.8555

**James W. Reid LSA#: 18109**

[jwreid@millერთhompson.com](mailto:jwreid@millერთhompson.com)

Tel: 403.298.2418

Lawyers for the Applicant