

**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
(Returnable June 8, 2023)

June 6, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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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: SISP, DIP Financing, and Stay Extension)
(Returnable on June 8, 2023)**

The Applicant, Plant-Based Investment Corp. (the “**Applicant**”), will make a motion to the Honourable Justice Conway on Thursday, June 8, 2023, at 9:30 am or as soon after that time as the motion can be heard, via Zoom videoconference,

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. The following orders:

- (a) an Order (the “**SISP Order**”), substantially in the form attached at **Tab “3”** of the Applicant’s motion record, among other things, approving a sale and investment solicitation process (“**SISP**”) in respect of the Applicant’s business and assets;
- (b) an Order (the “**Further ARIO**”), substantially in the form attached at **Tab “4”** of the Applicant’s motion record, among other things:
 - (i) approving an amended and restated debtor-in-possession term sheet (the “**Amended and Restated DIP Term Sheet**”) dated June 1, 2023 and made between the Company and 1000492681 Ontario Inc. (the “**DIP Lender**”), together with a corresponding increase to the Court-ordered charge granted in favour of the DIP Lender, to a maximum amount of \$1 million (from \$500,000 currently);
 - (ii) approving the sale of non-material assets in the amount of \$100,000 in any one transaction and \$200,000 in the aggregate, with the written consent of the Monitor;
 - (iii) granting a charge in favour of the current directors and officers of the Applicant in the amount of \$100,000 (the “**Directors’ Charge**”); and
 - (iv) extending the stay of proceedings to and including August 25, 2023 (the “**Extended Stay Period**”); and
- (c) Such further and other relief as counsel may advise, and as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

2. Capitalized terms not otherwise defined herein have the meanings prescribed to them in the affidavit of Paul Crath sworn June 5, 2023 and the SISP, as applicable.

Background to the Applicants

3. 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.

4. PBIC is an “investment company” as defined under Policy 2 of the Exchange.

5. 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**”).

6. 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.

Initial Order

7. On May 1, 2023, the Honourable Justice Conway granted the Initial Order in favour of the Applicant under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c, C-36, as amended (the “CCAA”) (the “**Initial Order**”).

8. Pursuant to the Initial Order, among other things:
- (a) appointed msi Spergel inc. as monitor of the Applicant (“**Monitor**”);
 - (b) granted an initial 10-day stay period (the “**Initial Stay Period**”) up to and including May 11, 2023;
 - (c) approved debtor-in-possession financing (the “**DIP Loan**”) from 1000492681 Ontario Inc. (“the “**DIP Lender**”), up to a maximum initial borrowing amount of \$200,000 (plus interest, fees, and expenses), and a corresponding charge in favour of the DIP Lender (the “**DIP Lender’s Charge**”);
 - (d) granted an administration charge in the amount of \$150,000 in favour of counsel for the Applicant, the Monitor, and the Monitor’s Counsel (the “**Administration Charge**”); and
 - (e) authorized the Applicant 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.

Comeback Hearing

9. At the comeback hearing on May 11, 2023 (“**Comeback Hearing**”), the Court granted an Amended and Restated Initial Order, among other things:
- (a) extending the stay of proceedings up to and including June 9, 2023;
 - (b) increasing the Administration Charge from \$100,000 to \$250,000;

- (c) increasing the DIP Lenders' Charge from \$200,000 to \$500,000; and
- (d) authorizing the Applicant to dispense with certain Securities Filing requirements.

Activities Since the Comeback Hearing

10. Since the Comeback Hearing, the Applicant has worked with the Monitor to, among other things, stabilize operations, prepare a detailed inventory of the Applicant's assets, respond to inquires from creditors, negotiate the Amended and Restated DIP Term Sheet, develop the SISP, and finalize an updated cash flow forecast through the proposed Extended Stay Period.

Approval of SISP

11. A copy of the SISP is included at Schedule "A" to the proposed SISP Order, at Tab 3A to the Motion Record.

12. The Applicant seeks approval of the SISP, which is designed to maximize recoveries for its creditors. Pursuant to the terms of the SISP, the Monitor, with the assistance of the Applicant, will solicit proposals for the purchase of investment in some or all the Applicant's assets, including its business, or a combination thereof (the "**Opportunity**").

13. The SISP is an efficient process that is structured to provide fairness and transparency. The details of the SISP are summarized in the Third Crath Affidavit and in the Monitor's Second Report filed in support of this motion. The key stages of the SISP are summarized below:

Stage	Description	Proposed Timing
Preparation	<ul style="list-style-type: none">• Assemble due diligence information• Set-up of electronic Data Room• Identify Known Potential Bidders	No later than the Commencement Date

	<ul style="list-style-type: none"> • Prepare Teaser Letter and template NDA 	
Notice and solicitation of interest	<ul style="list-style-type: none"> • Publish print and digital notice of the SISP in such publications as the Monitor considers appropriate, post the SISP on the Monitor’s website, issue a press release setting out key information regarding the SISP • Teaser Letter and NDA to be delivered to all Known Potential Bidders to notify them of the Opportunity 	Commencement Date: no later than June, 13, 2023
Due diligence and bidding	<ul style="list-style-type: none"> • In order to be considered as a Qualified Bidder, each Potential Bidder will deliver to the Monitor an executed NDA and required disclosure information • Qualified Bidders to be provided access to the Data Room • Bids due by Bid Deadline • Bids to indicate if a Sale Proposal, Investment Proposal or Hybrid Proposal and will include the required information and terms specified in the SISP • Monitor to assess Bids using the criteria outlined in the SISP to determine Qualified Bids 	<p>Six-week period immediately following Commencement Date</p> <p>Bid Deadline: 5:00 p.m. Eastern Standard Time on the date that is six weeks from the Commencement Date</p>
Evaluation of Bids and settlement of definitive documents	<ul style="list-style-type: none"> • Monitor to select the Successful Bid(s) • Settle and execute binding agreement(s) regarding the Successful Bid(s) 	No later than two weeks from the Bid Deadline
Sale approval hearing	<ul style="list-style-type: none"> • Motion for Court approval of the Successful Bid(s) 	No later than 10 Business Days from the selection of the Successful Bid(s), subject to the availability of the Court

14. The proposed SISP carefully balances efficiency with the need to provide sufficient time to expose the assets and allow interested parties to complete diligence.

15. The SISP is fair, transparent and appropriate, and will optimize the chances of identifying the best possible transaction for the sale of its assets and/or business for the following reasons, among others:

- (a) **Timing**. The time frame contemplated by the proposed SISP strikes an appropriate balance between providing sufficient time for interested parties to complete thorough due diligence, while also maintaining a high degree of efficiency. The SISP is designed to be completed before the end of the proposed Extended Stay Period on August 25, 2023.
- (b) **Flexibility**. The SISP is highly flexible as it invites interested parties to submit a Sale Proposal, Investment Proposal, or Hybrid Proposal for all or a portion of the Applicant's Business and Property. In addition, an important feature of the SISP is the discretion that the Monitor is authorized to exercise under the SISP, including with respect to, among other things, determining if the SISP requirements have been met by participants, waiving strict compliance with SISP requirements, extending timelines, and terminating the SISP. This discretion will provide the Monitor with the flexibility to adapt the SISP to respond to interest in the Opportunity and developments in the Business, all with a view to maximizing the recovery to creditors of the Applicant.
- (c) **Marketing Plan**. The SISP contemplates the Monitor actively reaching out to a list of Known Potential Bidders one business day following Court approval. All parties on this list will receive a non-confidential Teaser and NDA to kick-start the process. Further, the SISP will be exposed with print and digital ads across Canada and the United States to reach as many interested parties as possible.

16. The Monitor recommends approval of the proposed SISP.

Amended and Restated DIP Term Sheet and DIP Lender's Charge

17. The updated cash flow forecast appended to the Monitor's Second Report indicates that the Applicant will require additional funding to implement the SISP and fund operations in the ordinary course during the proposed Extended Stay Period.

18. The Applicant is therefore seeking approval of an Amended and Restated DIP Term Sheet, increasing the borrowing limit under the DIP Loan to maximum amount of \$1 million. The Applicant also seeks a corresponding increase to the DIP Lender's Charge.

19. To ensure that the DIP proceeds are conserved, any disbursements to investee companies shall be made only with the written approval of the Monitor.

Sale of Non-Material Assets

20. The Applicant seeks to include in the Amended and Restated Initial Order the model initial order provisions permitting it to dispose of non-material assets, in the amount of \$100,000 in any one transaction and \$200,000 in the aggregate, with the written consent of the Monitor.

21. The Applicant intends to sell its liquid, passive investments in publically traded securities to supplement the DIP Loan. The value of these investments will not be increased by a sale process and it is therefore in the best interests of stakeholders to monetize them now.

22. The ability to monetize non-material assets will ensure the Applicant can reasonably maximize its cash flow without expending limited resources on Court approval.

Director's Charge

23. The Applicant's Directors' and Officers' insurance policy will expire on or around June 9, 2023. While the Applicant is hopeful that a tail policy may be purchased at a reasonable cost, such a tail policy may be cost-prohibitive or contain unfavourable exclusions.

24. The Applicant will not be able to bind a policy before the return of the within motion on June 8, 2023 and therefore seeks the Directors' Charge as security for the Applicant's indemnification for possible liabilities that may be incurred by the current directors and officers, to a maximum of \$100,000.

25. The proposed quantum of the Directors' Charge was determined with the assistance of the Monitor. It is contemplated that the Directors' Charge will rank behind the Administration Charge and the DIP Lender's Charge.

26. The Directors' Charge is required in order to provide a level of protection to the directors and officers with respect to possible liabilities imposed on individuals in their capacity as directors and officers of a corporation in CCAA protection.

Stay Extension

27. The current stay of proceedings expires on June 9, 2023.

28. The Applicant has and continues to act in good faith and with due diligence, and has made significant process during these proceedings. The proposed Extended Stay Period will allow the Applicant to implement the SISP in order to maximize value for stakeholders.

29. If the proposed Amended and Restated DIP Term Sheet is approved, it is expected that the Applicant will have sufficient cash to operate in the ordinary course throughout the proposed Extended Stay Period, as reflected in the Updated Cash Flow Forecast appended to the Monitor's Second Report.

General

30. The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;

31. 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, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

32. 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;
- (b) The Affidavit of Paul Crath sworn May 8, 2023;
- (c) The Affidavit of Paul Crath sworn June 6, 2023 and the exhibits attached thereto, filed;
- (d) The First Report of the Monitor dated May 9, 2023, filed;
- (e) The Second Report of the Monitor, to be filed, and

- (f) Such further and other evidence as counsel may advise and this Court may permit.

June 6, 2023

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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
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Proceedings commenced at Toronto

**NOTICE OF MOTION
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(Returnable June 8, 2023)**

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Lawyers for the Applicant

TAB 2

Court File No.: CV-23-00698826-00CL

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Applicant

**AFFIDAVIT OF PAUL CRATH
(sworn June 6, 2023)**

I, Paul Crath, of the City of Brooklyn, in the State of New York, MAKE OATH AND
SAY AS FOLLOWS:

A. Introduction

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. 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**”), seeking:

- a. an Order (the “**SISP Order**”), substantially in the form attached at **Tab “3”** of the Applicant’s motion record, among other things, approving a sale and investment

solicitation process (“**SISP**”) in respect of the Applicant’s business and assets;
and

- b. an amended and restated Initial Order (the “**Amended and Restated Initial Order**”), substantially in the form attached at **Tab “4”** of the Applicant’s motion record, among other things,
- (i) approving an amended and restated debtor-in-possession term sheet (the “**Amended and Restated DIP Term Sheet**”) dated June 1, 2023 and made between the Company and 1000492681 Ontario Inc. (the “**DIP Lender**”), together with a corresponding increase to the Court-ordered charge granted in favour of the DIP Lender, to a maximum amount of \$1 million (from \$500,000 currently);
 - (ii) approving the sale of non-material assets in the amount of \$100,000 in any one transaction and \$200,000 in the aggregate, with the written consent of the Monitor;
 - (iii) granting a charge in favour of the current directors and officers of the Applicant in the amount of \$100,000 (the “**Directors’ Charge**”); and
 - (iv) extending the stay of proceedings to and including August 25, 2023 (the “**Extended Stay Period**”).

B. Background of CCAA Proceedings

3. I have sworn two affidavits in this CCAA proceeding: an affidavit sworn April 28, 2023 (“**Initial Crath Affidavit**”) and an affidavit sworn May 8, 2023 (“**Second Crath Affidavit**”).

This affidavit is supplementary to the Initial Crath Affidavit and the Second Crath Affidavit. Attached as **Exhibits “A”** and **“B”**, respectively, are copies of the Initial Crath Affidavit and the Second Crath Affidavit.

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

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. On May 1, 2023, PBIC obtained creditor protection and related relief through an initial order (**“Initial Order”**) granted by the Honourable Madam Justice Conway.

9. On May 11, 2023 (the **“Comeback Hearing”**), Justice Conway granted an amended and restated initial order, among other things, extending the stay of proceedings granted by the Initial

Order up to and including June 9, 2023. Attached as **Exhibit “C”** is the Order of Justice Conway dated May 11, 2023 which the Applicant seeks to amend on this motion.

10. Since the Comeback Hearing, the Applicant has worked with the Monitor to, among other things, stabilize operations, prepare a detailed inventory of the Applicant’s assets, negotiate the Amended and Restated DIP Term Sheet, develop the SISP, and finalize an updated cash flow forecast through the proposed Extended Stay Period.

C. Relief Sought at this Hearing

i. SISP Approval

11. All capitalized terms used in this section and not otherwise defined have the meanings given to them in the SISP.

12. The Applicant is seeking the Court’s approval of the SISP, which is designed to maximize recoveries for the Applicant’s creditors. The proposed SISP is a flexible process, soliciting proposals for the purchase or investment in some or all of the Applicant’s assets, including its business, or a combination thereof (the “**Opportunity**”). A copy of the SISP is attached as **Exhibit “D”**.

13. The SISP is designed to provide transparency and ensure that Potential Bidders are aware of timelines and requirements for bids, as well as the assessment criteria that will be used to select the Successful Bid(s).

14. The Applicant has, with the assistance of its advisors and the Monitor, considered various structures and timelines for the SISP, with the goal of crafting the best process to maximize stakeholder value.

15. Subject to this Court's approval, the SISP will be implemented by the Monitor in consultation with the Applicant, as and if requested.

16. The key stages of the proposed SISP are summarized below.

Stage	Description	Proposed Timing
Preparation	<ul style="list-style-type: none"> • Assemble due diligence information • Set-up of electronic Data Room • Identify Known Potential Bidders • Prepare Teaser Letter and template NDA 	No later than the Commencement Date
Notice and solicitation of interest	<ul style="list-style-type: none"> • Publish print and digital notice of the SISP in such publications as the Monitor considers appropriate, post the SISP on the Monitor's website, issue a press release setting out key information regarding the SISP • Teaser Letter and NDA to be delivered to all Known Potential Bidders to notify them of the Opportunity 	Commencement Date: no later than June, 13, 2023
Due diligence and bidding	<ul style="list-style-type: none"> • In order to be considered as a Qualified Bidder, each Potential Bidder will deliver to the Monitor an executed NDA and required disclosure information • Qualified Bidders to be provided access to the Data Room • Bids due by Bid Deadline • Bids to indicate if a Sale Proposal, Investment Proposal or Hybrid Proposal and will include the required information and terms specified in the SISP • Monitor to assess Bids using the criteria outlined in the SISP to determine Qualified Bids 	<p>Six-week period immediately following Commencement Date</p> <p>Bid Deadline: 5:00 p.m. Eastern Standard Time on the date that is six weeks from the Commencement Date</p>

Evaluation of Bids and settlement of definitive documents	<ul style="list-style-type: none"> • Monitor to select the Successful Bid(s) • Settle and execute binding agreement(s) regarding the Successful Bid(s) 	No later than two weeks from the Bid Deadline
Sale approval hearing	<ul style="list-style-type: none"> • Motion for Court approval of the Successful Bid(s) 	No later than 10 Business Days from the selection of the Successful Bid(s), subject to the availability of the Court

17. Multiple parties have already proactively contacted the Applicant or the Monitor regarding the Opportunity in advance of the announcement of the proposed SISP. I believe the Opportunity is already known in the industry and that a six-week period from the Commencement Date to the Bid Deadline is sufficient time to formally expose the Opportunity to the market.

18. If one or more Qualified Bids are received or so designated by the Monitor, the Monitor, in consultation with the Applicant if requested, may select the most favourable Qualified Bid(s) as the Successful Bid(s), using the criteria described in the SISP, subject to Court approval.

19. I believe the SISP will optimize the chances, in the particular circumstances facing the Applicant, of identifying the best possible transaction for the sale of its assets and/or business for the following reasons, among others.

20. **Timing**. The time frame contemplated by the proposed SISP strikes an appropriate balance between providing sufficient time for interested parties to complete thorough due diligence, while also maintaining a high degree of efficiency. Further, the SISP is designed to be completed before the end of the proposed Extended Stay Period on August 25, 2023.

21. **Flexibility**. The SISP is highly flexible as it invites interested parties to submit a Sale Proposal, Investment Proposal, or Hybrid Proposal for all or a portion of the Applicant's Business and Property. In addition, an important feature of the SISP is the discretion that the Monitor is authorized to exercise under the SISP, including with respect to, among other things, determining if the SISP requirements have been met by participants, waiving strict compliance with SISP requirements, extending timelines, and terminating the SISP. This discretion will provide the Monitor with the flexibility to adapt the SISP to respond to interest in the Opportunity and developments in the Business, all with a view to maximizing the recovery to creditors of the Applicant.

22. **Marketing Plan**. The SISP contemplates the Monitor actively reaching out to a list of Known Potential Bidders one business day following Court approval. All parties on this list will receive a non-confidential Teaser and NDA to kick-start the process. Further, the SISP will be exposed with print and digital ads across Canada and the United States to reach as many interested parties as possible.

23. In my opinion, it is critical that the SISP be commenced as soon as possible and no later than June 13, 2023. Without cash nourishment, the value of the Applicant's assets will decline and then collapse. This CCAA process is financed exclusively by the DIP Lender. Without the cash advance contemplated by the Amended and Restated DIP Term Sheet, the Applicant does not have sufficient funds to complete this CCAA process and bankruptcy – with concomitant investment value destruction – will almost certainly follow. Moreover, while the Applicant has made targeted payments to investee companies with the approval of the Monitor, these payments were one-off, value-preserving cash injections and not part of an ongoing commitment. The

Applicant's assets and/or business needs to be sold as soon as possible, such that the new owner(s) can take over investment maintenance obligations.

ii. Continued Funding of the CCAA Proceedings

24. The Applicant seeks approval of the Amended and Restated DIP Term Sheet attached hereto as **Exhibit "E"**. Attached as **Exhibit "F"** is a blackline of the Amended and Restated DIP Term Sheet against the version dated April 27, 2023 previously approved by the Court.

25. As illustrated in the updated cash flow forecast (the "**Updated Cash Flow Forecast**") prepared with the assistance of the Monitor, and appended to the Second Report of the Monitor (to be filed), the Applicant will require additional funding to complete the SISP and fund operations in the ordinary course during the proposed Extended Stay Period.

26. The DIP Loan provided through the Amended and Restated DIP Term Sheet is the Applicant's only available source of material funding. The advance of funds under the Amended and Restated DIP Term sheet is contingent upon Court approval of the SISP.

27. Under the Order of Justice Conway dated May 11, 2023, the Court approved the DIP Loan in the maximum initial aggregate principal amount of \$500,000. This initial DIP Loan was used to fund critical payments to investee companies, operating disbursements, and professionals' fees.

28. In accordance with the terms of the Amended and Restated DIP Term Sheet, the Applicant now seeks to increase the borrowing limit under the DIP Loan to \$1 million, as well as a corresponding increase to the DIP Lender's Charge. The DIP Loan will be used for: working capital in accordance with the Updated Cash Flow Forecast, professional fees and expenses,

including expenses related to the preparation and implementation of the SISP, and such other costs and expenses as may be agreed to by the DIP Lender.

29. To ensure that the DIP proceeds are conserved, the disbursements to investee companies shall be made only with the written approval of the Monitor.

iii. Sale of Non-Material Assets

30. The Applicant seeks to include in the proposed Amended and Restated Initial Order the model initial order provisions permitting it to dispose of non-material assets, in the amount of \$100,000 in any one transaction and \$200,000 in the aggregate, with the written consent of the Monitor.

31. The Applicant intends to sell its liquid, passive investments in publically traded securities to supplement the Amended and Restated 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

iv. Directors' Charge

32. The Applicant's Directors' and Officers' insurance policy will expire on or around June 9, 2023. While the Applicant is hopeful that a tail policy may be purchased at a reasonable cost, such a tail policy may be cost-prohibitive or contain unfavourable exclusions. In any event, the Applicant will not be able to bind a policy before the return of the within motion on June 8, 2023.

33. The Applicant therefore seeks the Directors' Charge as security for the Applicant's indemnification for possible liabilities that may be incurred by the current directors and officers, to a maximum of \$100,000.

34. The proposed quantum of the Directors' Charge was decided upon with the input of the Monitor's counsel. Given the litigious atmosphere currently surrounding Applicant, I am concerned that the Applicant's directors and officers may become subject to ultimately meritless post-filing litigation claims. The Directors' Charge is intended to reflect reasonable legal fees that may be incurred in defending such claims.

35. The Directors' Charge is proposed to rank behind the Administration Charge and the DIP Lender's Charge.

36. The Directors' Charge is required in order to provide a level of protection to the directors and officers with respect to possible liabilities imposed on individuals in their capacity as directors and officers of a corporation in CCAA protection.

37. I believe the quantum of the Directors' Charge is reasonably required at this time. Based on current information available, the Company does not intend to seek an increase to the Directors' Charge.

iv. Stay Extension

38. The current stay of proceedings in favour of the Applicant was granted until June 9, 2023.

39. On this motion, the Applicant requests an extension of the stay of proceedings up to and including August 25, 2023.

40. The Applicant has and continues to make significant process during these proceedings, and the proposed Extended Stay Period will allow it to implement the SISP in order to maximize value for stakeholders.

41. If the proposed Amended and Restated DIP Term Sheet is approved, it is expected that the Applicant will have sufficient cash to operate in the ordinary course throughout the proposed Extended Stay Period, as reflected in the Updated Cash Flow Forecast.

42. I believe the Applicant has acted and will continue to act in good faith and with due diligence.

D. Conclusion

43. I swear this affidavit in support of the orders sought and appended at Tabs 3 and 4 of the Applicant’s Motion Record, and for no other purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 6th day of June 2023, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely.

DocuSigned by:
Monica Faheim
A Commissioner for taking Affidavits
MONICA FAHEIM

DocuSigned by:
Paul Crath
Paul Crath

**This is Exhibit "A" referred to in the affidavit
of PAUL CRATH, SWORN BEFORE ME
this 6th day of June, 2023**

DocuSigned by:

Monica Faheim

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**A COMMISSIONER FOR TAKING AFFIDAVITS
MONICA FAHEIM**

Court File No.: CV-23-

**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 \$100,000 (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.

Investment Category	Cost	Fair Value	Percentage (Fair Value)
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%
Total Investments	\$37,697,208	\$11,722,533	100%

Portfolio Allocation	Cost	Fair Value	Percentage (Fair Value)
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%
Total	\$37,697,208	\$11,722,533	100%

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 \$100,000 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 28th 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)

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Lawyers for the Applicant

**This is Exhibit “B” referred to in the affidavit
of PAUL CRATH, SWORN BEFORE ME
this 6th day of June, 2023**

DocuSigned by:

Monica Faheim

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**A COMMISSIONER FOR TAKING AFFIDAVITS
MONICA FAHEIM**

Court File No.: CV-23-00698826-00CL

**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 record¹, 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

¹ 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 8th day of May 2023, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely.

patrick corney

Commissioner for Taking Affidavits



PAUL CRATH

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)

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Lawyers for the Applicant

**This is Exhibit “C” referred to in the affidavit
of PAUL CRATH, SWORN BEFORE ME
this 6th day of June, 2023**

DocuSigned by:

Monica Faheim

A927328446B742A

**A COMMISSIONER FOR TAKING AFFIDAVITS
MONICA FAHEIM**



Court File No. CV-23-00698826-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE CONWAY)
)
)

**THURSDAY, THE 11TH
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, 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) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (b) 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 (3rd) 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**

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Lawyers for the Applicant

**This is Exhibit “D” referred to in the affidavit
of PAUL CRATH, SWORN BEFORE ME
this 6th day of June, 2023**

DocuSigned by:

Monica Faheim

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**A COMMISSIONER FOR TAKING AFFIDAVITS
MONICA FAHEIM**

Sale and Investment Solicitation Process

Introduction

1. On May 1, 2023, Plant-Based Investment Corp. (the “**Applicant**”) was granted an initial order (as amended or amended and restated on May 11, 2023, and as may be further amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things:
 - (a) stayed all proceedings against the Applicant, its assets and its directors and officers;
 - (b) appointed msi Spergel Inc. as the monitor of the Applicant (in such capacity, the “**Monitor**”);
 - (c) authorized the Applicant to enter into a debtor-in-possession financing facility (the “**DIP Facility**”) with 1000492681 Ontario Inc. (the “**DIP Lender**”) pursuant to a Term Sheet dated April 27, 2023 (the “**DIP Term Sheet**”), and granted a charge in favour of the DIP Lender (the “**DIP Charge**”) over all of the Applicant’s present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof to secure the amounts outstanding under or in connection with the DIP Facility; and
 - (d) authorized the Applicant to pursue all avenues of sale or investment of its assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.
2. Further to the Applicant’s restructuring efforts and the terms of the DIP Facility, the Monitor will conduct the sale and investment solicitation process (the “**SISP**”) described herein, with the assistance of the Applicant, and pursuant to a Court order dated June 8, 2023 (the “**SISP Order**”). The SISP is intended to solicit proposals to purchase or invest in some or all of the Applicant’s assets, undertakings, and properties (collectively, the “**Property**”), including the Applicant’s business and operations (the “**Business**”).

Opportunity

3. Subject to approval of the Court, the Monitor will conduct the SISP described herein, to solicit proposals to purchase or invest in some or all of the Property, including the Business (the “**Opportunity**”).
4. The Opportunity may include one or more transactions involving the recapitalization, investment in, arrangement or reorganization of the Applicant or the Business as a going concern, or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
5. This document describes the SISP, including the manner in which interested parties: (a) may gain access to due diligence materials concerning the Applicant, the Business, and the Property; (b) the manner in which an interested party may become a Qualified Bidder (as defined below); (c) the process for the selection of one or more Successful Bidder(s) (as

defined below); and (d) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of one or more Successful Bid(s).

6. In the SISP, (a) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in this SISP falls on a day that is not a Business Day, then such date will be extended until the next Business Day; (ii) the words “include”, “includes”, and “including” will be deemed to be followed by the phrase “without limitation”; (iii) for certainty, the term “Property” includes each loan included advanced by the Applicant to a borrower (each, a “**Loan**”), the rights of the Applicant under the credit, security and other documentation governing each Loan and information regarding each borrower, guarantor or other obligor under each Loan contained in the records of the Applicant.

Timeline

7. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement Date	No later than June 13, 2023
Bid Deadline	5:00 p.m. Eastern Standard Time on the date that is six weeks from the Commencement Date
Settle and execute one or more binding agreement(s) regarding the Successful Bid(s)	No later than two weeks from the Bid Deadline
Hearing of Sale Approval Motion (as defined below)	No later than 10 Business Days from the selection of the Successful Bid(s), subject to the availability of the Court

8. Subject to any order of the Court, the dates set out in the SISP may be extended by the Monitor with the consent and approval of the Applicant and after consultation with the DIP Lender.

Solicitation of Interest: Notice of SISP

9. As soon as reasonably practicable, but in any event by no later than **June 13, 2023**:

- (a) the Monitor, in consultation with the Applicant, will prepare a list of potential bidders, including: (i) parties that have approached the Applicant or the Monitor indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Applicant, in consultation with the Monitor, believes may be interested in purchasing all or part of the Business and/or Property or investing in the Applicant pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
 - (b) the Monitor will arrange for a notice of SISP (and such other relevant information which the Monitor, in consultation with the Applicant, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition), and any other newspaper or journal as the Monitor, in consultation with the Applicant, considers appropriate, if any;
 - (c) the Monitor will issue a press release with Canada Newswire or a comparable newswire entity setting out the information contained in the Notice and such other relevant information which the Monitor, in consultation with the Applicant, considers appropriate, designating dissemination in Canada; and
 - (d) the Monitor, in consultation with the Applicant, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicant and the Monitor (an “**NDA**”).
10. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than June 13, 2023 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Applicant or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

11. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), must provide to the Applicant and the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
12. The Monitor, in consultation with the Applicant, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered a NDA to the Monitor and provided information as to their financial wherewithal to close a transaction such access to due diligence material and information relating to the Property and Business as the Applicant or the Monitor deem appropriate. Due diligence shall include access to an electronic data room maintained by the Monitor containing information about the Applicant and the Business (the “**Data Room**”), and may also include other matters which a Potential Bidder may reasonably request and as to which the Applicant, in its reasonable business judgment and after consulting with the Monitor, may agree. The Monitor will designate a

representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicant nor the Monitor will be obligated to furnish any information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicant, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information. Neither the Applicant nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale of the Property and the Business.

13. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicant.

Formal Binding Offers

14. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicant or its Property or Business (a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Monitor at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by the Monitor not later than **5:00 PM (Eastern Time) on the date that is four weeks from the Commencement Date** or as may be modified in the Bid process letter that may be circulate by the Monitor to Potential Bidders, with the approval of the Applicant and in consultation with the DIP Lender (the “**Bid Deadline**”):
 - (a) the Bid must be a binding offer to:
 - (i) acquire all, substantially all, or a portion of the Property (a “**Sale Proposal**”);
 - (ii) to recapitalize, invest in, arrange or reorganize the Applicant, the Property or the Business (an “**Investment Proposal**”); and/or
 - (iii) some combination of a Sale Proposal and an Investment Proposal (a “**Hybrid Proposal**”).
 - (b) the Bid (either individually or in combination with other Bids that make up one Bid) is an offer to purchase or make an investment in some or all of the Applicant or its Property or Business and is consistent with any necessary terms and conditions established by the Applicant and the Monitor and communicated to Bidders;
 - (c) the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, or the Back-Up Bidder (as defined below), its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
 - (d) the Bid includes duly authorized and executed transaction agreements which clearly state the purchase price, investment amount and any other key economic terms

expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto;

- (e) the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicant and the Monitor to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;
- (f) the Bid is not conditioned on: (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing;
- (g) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such Bid;
- (h) for a Sale Proposal, the Bid includes:
 - (i) the Purchase Price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iii) the allocation of the Purchase Price (or range if not finally determined) between the Loans and/or the other Property of the Applicant that is expected to be subject to the Transaction;
 - (iv) a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - (v) the Bidder’s proposal for addressing ongoing servicing and administration of the Loans that are subject to the proposed transaction, including with respect to requests or requirements for further funding;
 - (vi) a description of the conditions and approvals required to complete the closing of the transaction;
 - (vii) a description of those liabilities and obligations which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (viii) any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction; and
 - (ix) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the Purchase Price, payable upon submission of the Bid;
- (i) for an Investment Proposal, the Bid includes:
 - (i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

- (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicant in Canadian dollars;
 - (iii) the underlying assumptions regarding the pro forma capital structure;
 - (iv) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
 - (v) a description of the conditions and approvals required for to complete the closing of the transaction;
 - (vi) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (vii) any other terms or conditions of the Investment Proposal; and
 - (viii) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder;
- (j) for a Hybrid Proposal, the Bid includes:
- (i) the information set out in subparagraph 14(h) above regarding the portion of the Hybrid Proposal that constitutes a Sale Proposal; (ii) the information set out in subparagraph 14(i) above regarding the portion of the Hybrid Proposal that constitutes an Investment Proposal; and (iii) such other information as may be reasonably requested by the Monitor.
- (k) the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicant prior to submitting the Bid;
 - (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicant or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicant;
- (l) the Bid is received by the Bid Deadline; and
- (m) the Bid includes confirmation that, if the Bid is the Successful Bid and the Applicant has cash requirements in excess of the amounts available to it under the DIP Facility to get to a closing of the transaction then the Bidder will advance funds to the Applicant to allow it to fund their cash requirements by way of non-revolving facility in a manner that does not impair the priority of the DIP Facility or otherwise is satisfactory to the DIP Lender.
15. Following the Bid Deadline, the Monitor will assess the Bids received. The Monitor will designate the most competitive Bids that comply with the foregoing requirements to be

“Qualified Bids”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only Bidders whose bids have been designed as Qualified Bids are eligible to become the Successful Bidder(s).

16. The Monitor may waive strict compliance with any one or more of the requirements specified above and deem any non-compliant Bid to be a Qualified Bid; provided, however, that the Monitor shall not waive compliance with the requirements set out in paragraph 14 above without the consent of the DIP Lender.
17. The Monitor in its sole direction may, but is not obligated to, consult with the Applicant regarding the evaluation of Bids and designation of Bids as Qualified Bids.
18. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate.
19. If the Monitor, in consultation with the Applicant, is not satisfied with the number or terms of the Qualified Bids, the Monitor may, in consultation with the Applicant and with the approval of the Applicant, extend the Bid Deadline, or the Monitor may seek Court approval of an amendment to the SISF, in each case after consultation with the DIP Lender.
20. The Monitor may, in consultation with the Applicant if deemed necessary, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

Evaluation of Qualified Bids

21. The Monitor will review each Qualified Bid.
22. The Monitor in its sole direction may, but is not obligated to, consult with the Applicant regarding the evaluation of Qualified Bids.
23. A Qualified Bid will be evaluated based upon several factors including, without limitation: (a) the Purchase Price and the net value provided by such bid; (b) the identity, circumstances and ability of the Bidder to successfully complete the proposed transaction; (c) the proposed transaction documents; (d) factors affecting the speed, certainty, and value of the proposed transaction; (e) the assets included or excluded from the Bid; (f) the planned treatment of the Applicant’s stakeholders; (g) any related restructuring costs; and (h) the likelihood and timing of consummating the proposed transaction, each as determined by the Monitor.
24. If one or more Qualified Bids is received or so designated by the Monitor, the Monitor, exercising its reasonable judgment and with the assistance of the Applicant if requested, may select the most favourable Qualified Bid(s) (each a **“Successful Bid”**), whereupon the Monitor shall proceed to negotiate and settle the terms of a definitive Transaction agreement, with the applicable Bidder(s) who submitted a Successful Bid (each, a **“Successful Bidder”**). The terms of any such definitive Transaction agreement must be acceptable to the Monitor.

25. The Qualified Bidder putting forward the next most favourable Qualified Bid after the Successful Bid(s), as determined by the Monitor and the Applicant (the “**Back-Up Bidder**”), will be required to keep its offer open and available for acceptance until the closing of the Transaction contemplated by the Successful Bid.

Approval Motion for Successful Bid(s)

26. The Monitor will bring a motion before the Court (the “**Sale Approval Motion**”) for an order approving the Successful Bid(s) and authorizing the Applicant to enter into any and all necessary agreements regarding the Successful Bid(s) and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid(s).
27. All Qualified Bids other than the Successful Bid(s), will be deemed to be rejected by the Monitor and the Applicant on and as of the date of approval of the Successful Bid(s) by the Court.
28. The Sale Approval Motion will be held on a date to be schedule by the Court upon motion by the Applicant or the Monitor. The Approval Motion may be adjourned or rescheduled by the moving party, on notice to the Successful Bidder(s), by an announcement of the adjourned date at the Sale Approval Motion and without the need for any further notice thereof, provided that in no circumstance will the Sale Approval Motion, be adjourned or rescheduled beyond September 1, 2023, without the consent of the Successful Bidder(s).

Deposits

29. All cash Deposits will be retained by the Monitor and invested in an interest-bearing trust account. If there is one or more Successful Bid(s), the Deposit (plus accrued interest) paid by the Successful Bidders(s) whose bid is approved at the Sale Approval Motion will be applied in partial satisfaction of the consideration to be paid or provided by the Successful Bidder under the Successful Bid upon closing of the approved Transaction and will be non-refundable. The Deposits (plus applicable interests) of Qualified Bidders not selected as Successful Bidders(s) will be returned to such parties within 5 Business Days of the date upon which the Successful Bid(s) is approved by the Court. If there is no Successful Bid, subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the Qualified Bidders within 5 Business Days of the date upon which the SISP is terminated in accordance with its terms.
30. If a Successful Bidder(s) breaches its obligations under the terms of the SISP, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

Approvals

31. For the avoidance of doubt, the approvals required under the terms hereof are in addition to, and not in substitution for, any other approvals required under any statute or as otherwise required at law in order to implement a Successful Bid.

“As Is, Where Is”

32. Any Transaction will be on an “as is, where is” basis at the time of closing and without surviving representations or warranties of any kind, nature, or description by the Applicant or the Monitor or any of their affiliates, advisors, agents or representatives, except to the extent otherwise expressly provided under a definitive agreement with respect to a Transaction with a Successful Bidder executed and delivered by the Applicant and approved by the Court. None of the Applicant or the Monitor, or any of their affiliates, advisors, agents or representatives, makes any representation or warranty as to title, description, fitness for purpose, merchantability, quantity, conditions or quality of the Property, the Business, or the accuracy or completeness of the information provided to any party under the SISP or otherwise, including the information contained in any of the Teaser, and the Data Room. Each party that participates in the SISP shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation regarding the Property, the Business and otherwise regarding the Applicant. It shall be the Successful Bidder’s sole responsibility to obtain, at its own expense, any consents necessary to close a Transaction and any further documents or assurances which are necessary or desirable in the circumstance. Without limiting the generality of the foregoing, any and all conditions, warranties, and representations expressed or implied pursuant to the Sale of Goods Act (Ontario), or any similar legislation in force outside of Ontario, does not apply to any Transaction and will be waived by the Successful Bidder(s).

No Obligation to Conclude a Transaction

33. The highest Bid received under the SISP will not necessarily be accepted. In addition, at any time during the SISP, the Monitor may terminate the SISP and will provide notice of such decision to all Qualified Bidders.

Advice and Directions from the Court

34. At any time during the SISP, the Monitor may apply to the Court for advice and directions and with respect to the discharge of its powers and duties hereunder.

Confidentiality and Access to Information

35. All discussions regarding a Sale Proposal, Investment Proposal, Hybrid Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicant be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
36. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicant, the Monitor and such other Bidders or Potential Bidders in connection with the SISP, except to the extent the Applicant, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Potential Bidders or Bidders.

Supervision of the SISP

37. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
38. This SISP does not, and will not, be interpreted to create any contractual or other legal relationship between the Applicant or the Monitor and any Potential Bidder, any Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicant.
39. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Applicant, the DIP Lender or any other creditor or other stakeholder of the Applicant, for any act or omission related to the process contemplated by this SISP, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Monitor. By submitting a Bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.
40. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
41. Without limiting in any way the intent and effect of the applicable provisions of the DIP Facility in respect of the SISP, the Applicant and the Monitor shall have the right to modify the SISP (including, without limitation, pursuant to the Bid process letter) following consultation with the DIP Lender if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Schedule “1”

Address of Monitor

To the Monitor:

msi Spergel Inc.
200 Yorkland Blvd., Suite 1100
Toronto, ON M2J 5C1

Attention: Mukul Manchanda, Philip Gennis

Email: mmanchanda@spergel.ca
pgennis@spergel.ca

**This is Exhibit “E” referred to in the affidavit
of PAUL CRATH, SWORN BEFORE ME
this 6th day of June, 2023**

DocuSigned by:

Monica Faheim

**A COMMISSIONER FOR TAKING AFFIDAVITS
MONICA FAHEIM**

June 1, 2023

Plant-Based Investment Corp.

340 Richmond Street West
Toronto, Ontario M5V 1X2

Attention: Paul Crath, Chief Executive Officer

Re: Debtor-in-Possession Financing of Plant-Based Investment Corp.

A. On May 1, 2023, Plant-Based Investment Corp. (the “**Borrower**”) applied for and commenced proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), pursuant to the Initial Order (the “**Initial Order**”) of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). msi Spergel Inc. was appointed as the Monitor of the Borrower (in such capacity, the “**Monitor**”) for the proceedings commenced by the Initial Order (the “**CCAA Proceedings**”).

B. The Initial Order was amended and restated on May 11, 2023 (the “**ARIO**”) in order to, among other things: (i) extend the stay of proceedings established by the Initial Order; and (ii) increase the Interim Financing Charge (as defined herein).

C. The Borrower intends to file a motion with the Court seeking, among other things: (i) a further increase in the Interim Financing Charge; and (ii) approval of a Court-supervised sales and investment solicitation process (“**SISP**”) to be conducted within the CCAA Proceedings.

D. 1000492681 Ontario Inc. (the “**Lender**”) has funded the CCAA Proceedings to date by advancing to the Borrower a debtor-in-possession loan in accordance with the terms and conditions of a debtor-in-possession term sheet dated April 27, 2023 (the “**Original Term Sheet**”).

E. The Borrower and the Lender have agreed to amend and restate the terms of the Original Term Sheet pursuant to, and in accordance with, the terms and conditions of this amended and restated debtor-in-possession term sheet (this “**Term Sheet**”).

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

SUMMARY OF TERMS FOR DIP FACILITY

- 1. Borrower:** Plant-Based Investment Corp.
- 2. Lender:** 1000492681 Ontario Inc.
- 3. DIP Facility:** Non-revolving facility in the maximum principal amount of \$1,000,000 (the “**DIP Facility**”).
- 4. Purpose:** The DIP Facility shall be available to 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 (as defined below); (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.

For greater certainty, the Borrower may not use the proceeds of the DIP Facility to pay any pre-filing obligations of the Borrower without the prior written consent of the Lender and the Monitor.

5. Facility Advances:

Subject to the funding conditions set out in Section 11 of this Term Sheet, the DIP Facility shall be available in multiple advances (individually, an “**Advance**” and collectively, the “**Advances**”).

The Lender and the Borrower acknowledge and agree that as of the date hereof, the DIP Facility is drawn at \$500,000 (exclusive of interest, Lender’s Fees and Expenses and the Fees, each as defined herein). The balance of the DIP Facility shall become available to the Borrower upon the issuance of a further amended and restated ARIO increasing the Interim Financing Charge to the maximum principal amount of \$1,000,000.

The Borrower shall provide the Lender with no less than two (2) business days’ written notice for any requested Advance. Nothing in this Term Sheet creates a legally binding obligation of the Lender to advance any amount under the DIP Facility at any time unless the Borrower is in compliance with the provisions of this Term Sheet.

6. Interest Rate and Fees:

Interest on the principal amount of each Advance outstanding from time to time shall be calculated at a rate equal to 12% per annum, which interest shall be calculated on the daily outstanding balance owing under the DIP Facility, and shall accrue and be paid on the Maturity Date (as defined below).

The Borrower shall pay:

- a) a commitment fee in the amount of \$20,000, representing 2% of the total amount available under the DIP Facility (the “**Commitment Fee**”); and
- b) an additional fee in the amount of \$15,000, on account of fees earned for a loan transaction arranged in March, 2023, that did not close (the “**March Loan Fee**” and together with the Commitment Fee, collectively, the “**Fees**”).

The Fees shall be fully earned upon the execution of this Term Sheet and shall be paid or otherwise satisfied on the Maturity Date. At the Lender’s option, the March Loan Fee may be satisfied by the transfer of 150,000 shares of Delota Corp., or shares of another investee entity at a valuation to be agreed upon between the Borrower and the Lender; provided, however, that the exercise of such option and the terms of payment shall be approved by the Monitor.

For certainty, the Fee shall be secured by the Interim Financing Charge.

7.

8. Fees and Expenses:

The Borrower shall pay all fees and expenses (collectively, the “**Lender’s Fees and Expenses**”) incurred by the Lender in connection with the preparation, registration and ongoing administration of the Original Term Sheet, this Term Sheet, the DIP Facility, the Initial Order, the ARIO, the Interim Financing Charge and with the enforcement of the Lender’s rights and remedies hereunder and

thereunder, at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Lender, on a full indemnity basis. For greater certainty, “Lender’s Fees and Expenses” shall include all reasonable fees and expenses incurred by the Lender in connection with the CCAA Proceedings and all Court attendances in respect thereof. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower, such expense shall be added to the DIP Facility and shall accrue interest at the rate set out above. All such fees and expenses and interest thereon shall be secured by the Interim Financing Charge whether or not any funds under the DIP Facility are advanced.

9. Security:

All debts, liabilities and obligations of the Borrower to the Lender under or in connection with the DIP Facility, this Term Sheet and any other documents delivered in connection therewith shall be secured by a Court-ordered priority charge (the “**Interim Financing Charge**”) granted to the Lender in and to all present and future properties, assets, and undertakings of the Borrower, real and personal, tangible and intangible, whether now owned or hereafter acquired (the “**Property**”), subject only to an administration charge in the maximum aggregate amount of \$250,000 for the payment of the fees and expenses of the Monitor, counsel to the Borrower and counsel to the Monitor (the “**Administration Charge**”).

10. Maturity Date:

The Borrower shall repay all obligations owing under the DIP Facility on the earlier of (the “**Maturity Date**”):

- (a) October 31, 2023;
- (b) the closing of a sale or investment transaction for substantially all of the Property, resulting from the SISP, which transaction has been approved by an order of the Court;
- (c) the implementation of a plan of compromise or arrangement within the CCAA Proceedings, which has been approved by the requisite majority of the Borrower’s creditors, and by an order of the Court;
- (d) the date on which the CCAA Proceedings are terminated for any reason, including if the CCAA Proceedings are converted into a proceeding under the *Bankruptcy and Insolvency Act* (the “**BIA**”);
- (e) the occurrence of an Event of Default (as defined herein), subject to a cure period of five (5) business days, beginning on the date that the Lender learns of such Event of Default.

11. Funding Conditions:

The availability of any Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:

- (a) The Court shall have issued the ARIIO, in a form satisfactory to the Lender, including:
 - i. approving this Term Sheet and the DIP Facility;
 - ii. granting the Interim Financing Charge in favour of the Lender;

- iii. authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Interim Financing Charge;
 - iv. providing that the Interim Financing Charge shall be valid and effective to secure all of the obligations of the Borrower to the Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;
 - v. declaring that the granting of the Interim Financing Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the Interim Financing Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and
 - vi. provisions restricting the granting of any additional liens or encumbrances on the Property, other than as permitted herein and in the ARIO;
- (b) The ARIO shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably;
 - (c) The Court shall have issued an Order approving the SISF, in form and substance satisfactory to the Lender, on or before June 8, 2023 (or such later date as may be necessary due to Court availability), and such Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably;
 - (d) no Event of Default shall have occurred.

12. Covenants:

The Borrower covenants and agrees with the Lender, so long as any amounts are outstanding by the Borrower to the Lender hereunder, to:

- (a) promptly on the receipt by the Borrower of the same, give the Lender a copy of any Notice of Motion or Application to vary, supplement, revoke, terminate or discharge the Initial Order or the ARIO, including (without limitation) any application to the Court for the granting of new or additional security that will or may have priority over the Interim Financing Charge, or otherwise for the variation of the priority of the Interim Financing Charge;
- (b) provide the Lender with any additional financial information reasonably requested by the Lender, to the extent that it is readily available;
- (c) use the Advances only in accordance with Section 4 of this Term Sheet;
- (d) provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute

an Event of Default, a breach of any covenant or other term or condition of this Term Sheet, or of any document executed in connection with this Term Sheet;

- (e) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (f) pay all property taxes and other claims which, under law, may rank prior to or *pari passu* with the Interim Financing Charge due and payable from and after the commencement of the CCAA Proceedings, as and when such amounts are due;
- (g) not declare any dividend, or make any other distributions with respect to any shares of the Borrower without the prior written consent of the Lender;
- (h) not make any payment to any director, officer, investor or related party (except salary and wages in the normal course) without the prior written consent of the Lender;
- (i) keep the Property fully insured against such perils and in such manner as would be customarily insured by companies owning similar assets;
- (j) not sell, transfer, assign, convey or lease any Property unless agreed to by the Lender; and
- (k) not, without the prior written consent of the Lender, incur any borrowings or other secured indebtedness, obligations or liabilities, other than the DIP Facility, or create or grant any security (other than the Administration Charge and the Interim Financing Charge) over any of its Property, whether ranking in priority to or subordinate to the Interim Financing Charge.

13. Events of Default:

The DIP Facility shall be subject to the following events of default (“**Events of Default**”):

- (a) the Borrower’s failure to pay any amount due hereunder when due and payable;
- (b) any covenant, condition precedent, payment obligation, or other term or condition of this Term Sheet is not complied with or fulfilled to the satisfaction of the Lender;
- (c) the seeking or support by the Borrower of, or the issuance of, any court order (in the CCAA Proceedings or otherwise) which is adverse or potentially adverse to the interests of the Lender;
- (d) the issuance of any Court order lifting or terminating (in whole or in part) the stay of proceedings in the CCAA Proceedings, or discontinuing, dismissing or otherwise terminating the CCAA Proceedings;

- (e) the issuance of any court order staying, reversing, vacating or modifying the terms of the Initial Order or the ARIIO, the DIP Facility or the Interim Financing Charge without the Lender's consent;
- (f) the service or filing of a notice of appeal, application for leave to appeal, or an appeal in respect of the Initial Order or the ARIIO, in each case if the notice of appeal, application for leave to appeal or appeal is not being actively defended by the Borrower or if the appeal is granted;
- (g) the occurrence of an event that will, in the opinion of the Lender, materially impair the Borrower's financial condition, operations or ability to perform under this Term Sheet or any order of the Court;
- (h) failure by the Borrower to comply with the Initial Order or the ARIIO;
- (i) the occurrence of any material adverse change in: (i) the business, operations, or financial condition of the Borrower; (ii) the Property of the Borrower; (iii) the Interim Financing Charge, including its relative priority; (iv) the ability of the Borrower to perform its obligations to the Lender or to any person under any material contract; or (v) the Lender's ability to enforce any of its rights or remedies against the Property or for the obligations of the Borrower to be satisfied from the realization thereof;
- (j) the Borrower becomes bankrupt or subject to a proceeding under the BIA, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed in respect of the Borrower or any of its Property;
- (k) the acceptance of any offer resulting from the SISP, or the filing of a motion seeking approval of the Court to accept any such offer, unless the total indebtedness owing by the Borrower under the DIP Facility is to be paid in full in cash or other immediately available funds upon completion of the transaction resulting from such offer, or unless the Lender has consented to such acceptance or filing in writing;
- (l) the sale, transfer, assignment, conveyance or lease of substantially all of the Property, except pursuant to a transaction resulting from the SISP or as may be otherwise approved by the Lender in writing;
- (m) the filing of any plan of reorganization, compromise, arrangement or liquidation to which the Lender does not consent;
- (n) the commencement of any claim, action, proceeding, application, motion, defense or other contested matter the purpose of which is to seek or the result of which would be to obtain any order, judgment, determination, declaration or similar relief: (i) invalidating, setting aside, avoiding, or subordinating the obligations of the Borrower under the DIP Facility, the Interim Financing Charge or its priority; (ii) for monetary, injunctive or other relief against the Lender or the Property; or (iii) preventing, hindering or otherwise delaying the exercise by the Lender of any of its rights and remedies hereunder, pursuant to the Initial Order or the ARIIO or under applicable law, or the enforcement or realization by the Lender against any of the Property.

14. Remedies and Enforcement:

Following the occurrence of an Event of Default, and upon five (5) business days' written notice to the Borrower and the Monitor, the Lender shall have the right, subject to the Lender obtaining an Order from the Court lifting the stay under the CCAA Proceedings, to:

- (a) terminate the DIP Facility;
- (b) enforce the Interim Financing Charge and realize on the Borrower's Property and any other collateral securing the DIP Facility;
- (c) exercise the rights and powers of a secured lender and mortgagee pursuant to the *Personal Property Security Act* (Ontario), the *Mortgages Act* (Ontario) or any legislation of similar effect; and
- (d) exercise all such other rights and remedies available to the Lender under this Term Sheet, the Initial Order, the ARIO, any other order of the Court or applicable law.

No failure or delay on the part of the Lender in exercising any of its rights and remedies shall be deemed to be a waiver of any kind.

15. Evidence of Indebtedness:

The Lender shall maintain records evidencing the DIP Facility. The Lender's accounts and records shall constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Lender under the DIP Facility.

16. Amendment and Restatement:

This Term Sheet amends and restates the Original Term Sheet and is not a novation of the Original Term Sheet. All indebtedness, liabilities and obligations of the Borrowers under the Original Term Sheet shall continue as obligations under this Term Sheet and this Term Sheet shall not evidence or result in a novation of such indebtedness, liabilities or obligations.

17. Further Assurances:

The Borrower will, at its own expense and promptly on demand by the Lender at any time, do such acts and things and execute and deliver such deeds and documents as the Lender may request to give effect to any of the provisions set out hereunder.

18. Assignment:

The Borrower shall not assign this Term Sheet or any of the provisions set out herein without the prior written consent of the Lender. The Lender may assign or sell its rights or obligations with respect to this Term Sheet to any person without the prior written consent of the Borrower.

19. Governing Law:

The DIP Facility and the provisions set out herein shall be governed by and construed in all respects in accordance with the laws of Ontario and the laws of Canada applicable therein.

20. Currency:

All references to currency in this Term Sheet are references to Canadian Dollars.

21. Acceptance:

This Term Sheet is open for acceptance until 5:00 p.m. (Toronto time) on June 2, 2023. A copy of this Term Sheet, countersigned by the Borrower, may be delivered by electronic transmission or personal delivery.

[Signature Page Follows]

Dated as of the date first written above.

1000492681 ONTARIO INC.

By: 

Name: Desmond D'Silva

Title: President

I have authority to bind the Corporation.

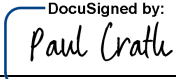
ACCEPTANCE

TO: 1000492681 ONTARIO INC.

For good and valuable consideration received, Plant-Based Investment Corp. accepts and agrees to comply with the provisions of the Term Sheet set out above.

Dated this ____ day of June, 2023.
6/6/2023 | 7:23 AM PDT

PLANT-BASED INVESTMENT CORP.

By:  _____
Name: Paul Crath
Title: Chief Executive Officer
I have authority to bind the Corporation.

**This is Exhibit “F” referred to in the affidavit
of PAUL CRATH, SWORN BEFORE ME
this 6th day of June, 2023**

DocuSigned by:

Monica Faheim

A COMMISSIONER FOR TAKING AFFIDAVITS
MONICA FAHEIM

~~April 27, 2022~~ June 1, 2023

Plant-Based Investment Corp.

340 Richmond Street West
Toronto, Ontario M5V 1X2

Attention: Paul Crath, Chief Executive Officer

Re: **Debtor-in-Possession Financing of Plant-Based Investment Corp.**

A. On May 1, 2023, Plant-Based Investment Corp. (the “**Borrower**”) ~~intends to make an application to~~ applied for and commenced proceedings under the Companies’ Creditors Arrangement Act (the “**CCAA**”), pursuant to the Initial Order (the “**Initial Order**”) of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) ~~for an initial order (the “**Initial Order**”), among other things, commencing proceedings (the “**CCAA Proceedings**”) under the Companies Creditors’ Arrangement Act (the “**CCAA**”), imposing of a stay of proceedings (the “**Initial Stay**”), appointing~~ msi Spergel Inc. was appointed as the Monitor of the Borrower (in such capacity, the “**Monitor**”), approving this term sheet (this “**Term Sheet**”) for the proceedings commenced by the Initial Order (the “**CCAA Proceedings**”).

B. The Initial Order was amended and restated on May 11, 2023 (the “**ARIO**”) in order to, among other things: (i) extend the stay of proceedings established by the Initial Order; and ~~granting~~ (ii) increase the Interim Financing Charge (as defined below) in the sum of \$200,000 herein.

~~BC. In the event that the Initial Order is granted, and prior to the expiry of the Initial Stay, the Borrower will seek an Amended and Restated Initial Order within the CCAA Proceedings (the “**ARIO**”) seeking, in addition to the relief set out in the Initial Order: (i) an extension of the Initial Stay~~ The Borrower intends to file a motion with the Court seeking, among other things: (i) a further increase in the Interim Financing Charge; and (ii) approval of a Court-supervised sales and investment solicitation process (“**SISP**”) to be conducted within the CCAA Proceedings; and (iii) an increase in the Interim Financing Charge to \$500,000.00.

~~C. The Borrower requires immediate funding to satisfy the cashflow requirements of the CCAA Proceedings and the SISP, and other short term liquidity requirements.~~

D. 1000492681 Ontario Inc. (the “**Lender**”) has ~~agreed to advance~~ funded the CCAA Proceedings to date by advancing to the Borrower a debtor-in-possession loan in ~~the aggregate principal amount of \$500,000 subject to, and in~~ accordance with; the terms and conditions of ~~this~~ a debtor-in-possession term sheet dated April 27, 2023 (the “**Original Term Sheet**”).

E. The Borrower and the Lender have agreed to amend and restate the terms of the Original Term Sheet pursuant to, and in accordance with, the terms and conditions of this amended and restated debtor-in-possession term sheet (this “**Term Sheet**”).

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

SUMMARY OF TERMS FOR DIP FACILITY

1. **Borrower:** Plant-Based Investment Corp.

2. **Lender:** 1000492681 Ontario Inc.

3. **DIP Facility:** Non-revolving facility in the maximum principal amount of ~~\$500,000~~ 1,000,000 (the “**DIP Facility**”).

4. **Purpose:** The DIP Facility shall be available to 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 (as defined below); (iii) professional fees and expenses incurred by the Borrower and the Monitor in respect of the CCAA Proceedings and the SISF; and (iv) such other costs and expenses of the Borrower as may be agreed to by the Lender, in writing.

For greater certainty, the Borrower may not use the proceeds of the DIP Facility to pay any pre-filing obligations of the Borrower without the prior written consent of the Lender and the Monitor.

5. **Facility Advances:** Subject to the funding conditions set out in Section 11 ~~and Section 12~~ of this Term Sheet, the DIP Facility shall be available in ~~two~~ multiple advances, ~~as follows:~~ (individually, an “**Advance**” and collectively, the “**Advances**”).

~~(a) upon the issuance of the Initial Order, \$200,000, or such lesser amount as may be approved by the Initial Order (the “**First Advance**”), shall be advanced to the Borrower to finance working capital requirements for the 10-day period immediately following the date of the Initial Order; and~~

The Lender and the Borrower acknowledge and agree that as of the date hereof, the DIP Facility is drawn at \$500,000 (exclusive of interest, Lender’s Fees and Expenses and the Fees, each as defined herein). The balance of the DIP Facility shall become available to the Borrower upon the issuance of a further amended and restated ARIIO increasing the Interim Financing Charge to the maximum principal amount of \$1,000,000.

~~(b) upon the issuance of the ARIIO, the balance of the DIP Facility, being \$300,000 (the “**Second Advance**” and together with the First Advance, the “**Advances**”), shall be advanced to the Borrower. The Borrower shall provide the Lender with no less than two (2) business days’ written notice for any requested Advance. Nothing in this Term Sheet creates a legally binding obligation of the Lender to advance any amount under the DIP Facility at any time unless the Borrower is in compliance with the provisions of this Term Sheet.~~

6. **Interest Rate and Fees:** Interest on the principal amount of each Advance outstanding from time to time shall be calculated at a rate equal to 12% per annum, which interest shall be calculated on the daily outstanding balance owing under the DIP Facility, and shall accrue and be paid on the Maturity Date (as defined below).

The Borrower shall pay :

a) a commitment fee in the amount of ~~\$10,000 (the “**Fee**”)~~ 20,000, representing 2% of the total amount available under the DIP Facility;

~~which~~ (the “**Commitment Fee**”); and

b) an additional fee in the amount of \$15,000, on account of fees earned for a loan transaction arranged in March, 2023, that did not close (the “**March Loan Fee**” and together with the Commitment Fee, collectively, the “**Fees**”).

The Fees shall be fully earned upon the execution of this Term Sheet and shall be paid or otherwise satisfied on the Maturity Date. At the Lender’s option, the March Loan Fee may be satisfied by the transfer of 150,000 shares of Delota Corp., or shares of another investee entity at a valuation to be agreed upon between the Borrower and the Lender; provided, however, that the exercise of such option and the terms of payment shall be approved by the Monitor.

For certainty, the Fee shall be secured by the Interim Financing Charge.

7.

8. Fees and Expenses:

The Borrower shall pay all fees and expenses (collectively, the “**Lender’s Fees and Expenses**”) incurred by the Lender in connection with the preparation, registration and ongoing administration of the Original Term Sheet, this Term Sheet, the DIP Facility, the Initial Order, the ARIO, the Interim Financing Charge and with the enforcement of the Lender’s rights and remedies hereunder and thereunder, at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Lender, on a full indemnity basis. For greater certainty, “Lender’s Fees and Expenses” shall include all reasonable fees and expenses incurred by the Lender in connection with the CCAA Proceedings and all Court attendances in respect thereof. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower, such expense shall be added to the DIP Facility and shall accrue interest at the rate set out above. All such fees and expenses and interest thereon shall be secured by the Interim Financing Charge whether or not any funds under the DIP Facility are advanced.

9. Security:

All debts, liabilities and obligations of the Borrower to the Lender under or in connection with the DIP Facility, this Term Sheet and any other documents delivered in connection therewith shall be secured by a Court-ordered priority charge (the “**Interim Financing Charge**”) granted to the Lender in and to all present and future properties, assets, and undertakings of the Borrower, real and personal, tangible and intangible, whether now owned or hereafter acquired (the “**Property**”), subject only to an administration charge in the maximum aggregate amount of ~~\$150,000~~250,000 for the payment of the fees and expenses of the Monitor, counsel to the Borrower and counsel to the Monitor (the “**Administration Charge**”).

10. Maturity Date:

The Borrower shall repay all obligations owing under the DIP Facility on the earlier of (the “**Maturity Date**”):

(a) October 31, 2023;

(b) the closing of a sale or investment transaction for substantially all of the Property, resulting from the SISF, which transaction has been approved by an order of the Court;

(c) the implementation of a plan of compromise or arrangement within the

CCAA Proceedings, which has been approved by the requisite majority of the Borrower's creditors, and by an order of the Court;

(d) the date on which the CCAA Proceedings are terminated for any reason, including if the CCAA Proceedings are converted into a proceeding under the *Bankruptcy and Insolvency Act* (the "BIA");

(e) the occurrence of an Event of Default (as defined herein), subject to a cure period of five (5) business days, beginning on the date that the Lender learns of such Event of Default.

~~11. Funding Conditions; First Advance:~~

~~The availability of the First Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:~~

- ~~(a) The Court shall have issued the Initial Order, in a form satisfactory to the Lender, including:
 - ~~i. approving this Term Sheet and the DIP Facility;~~
 - ~~ii. granting the Interim Financing Charge in favour of the Lender;~~
 - ~~iii. authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Interim Financing Charge;~~
 - ~~iv. providing that the Interim Financing Charge shall be valid and effective to secure all of the obligations of the Borrower to the Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;~~
 - ~~v. declaring that the granting of the Interim Financing Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the Interim Financing Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and~~
 - ~~vi. provisions restricting the granting of any additional liens or encumbrances on the Property, other than as permitted herein and in the Initial Order;~~~~
- ~~(b) The Initial Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably;~~
- ~~(c) no Event of Default shall have occurred.~~

11. 12. Funding Conditions; Second Advance:

The availability of ~~the Second~~any Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:

(a) The Court shall have issued the ARIO, in a form satisfactory to the Lender, including:

~~i. approving the SISP;~~

i. ~~ii.~~ approving this Term Sheet and the DIP Facility;

ii. ~~iii.~~ granting the Interim Financing Charge in favour of the Lender;

iii. ~~iv.~~ authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Interim Financing Charge;

iv. ~~v.~~ providing that the Interim Financing Charge shall be valid and effective to secure all of the obligations of the Borrower to the Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;

v. ~~vi.~~ declaring that the granting of the Interim Financing Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the Interim Financing Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and

vi. ~~vii.~~ provisions restricting the granting of any additional liens or encumbrances on the Property, other than as permitted herein and in the ARIO;

(b) The ARIO shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably;

(c) The Court shall have issued an Order approving the SISP, in form and substance satisfactory to the Lender, on or before June 8, 2023 (or such later date as may be necessary due to Court availability), and such Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably;

(d) (e) no Event of Default shall have occurred.

12. 13. Covenants:

The Borrower covenants and agrees with the Lender, so long as any amounts are outstanding by the Borrower to the Lender hereunder, to:

(a) promptly on the receipt by the Borrower of the same, give the Lender a copy of any Notice of Motion or Application to vary, supplement, revoke, terminate or discharge the Initial Order or the ARIO, including (without limitation) any application to the Court for the granting of new or additional security that will or may have priority over the Interim Financing Charge, or otherwise for the variation of the priority of the

Interim Financing Charge;

- (b) provide the Lender with any additional financial information reasonably requested by the Lender, to the extent that it is readily available;
- (c) use the Advances only in accordance with Section 4 of this Term Sheet;
- (d) provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Term Sheet, or of any document executed in connection with this Term Sheet;
- (e) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (f) pay all property taxes and other claims which, under law, may rank prior to or *pari passu* with the Interim Financing Charge due and payable from and after the commencement of the CCAA Proceedings, as and when such amounts are due;
- (g) not declare any dividend, or make any other distributions with respect to any shares of the Borrower without the prior written consent of the Lender;
- (h) not make any payment to any director, officer, investor or related party (except salary and wages in the normal course) without the prior written consent of the Lender;
- (i) keep the Property fully insured against such perils and in such manner as would be customarily insured by companies owning similar assets;
- (j) not sell, transfer, assign, convey or lease any Property unless agreed to by the Lender; and
- (k) not, without the prior written consent of the Lender, incur any borrowings or other secured indebtedness, obligations or liabilities, other than the DIP Facility, or create or grant any security (other than the Administration Charge and the Interim Financing Charge) over any of its Property, whether ranking in priority to or subordinate to the Interim Financing Charge.

13. ~~14.~~ Events of Default:

The DIP Facility shall be subject to the following events of default (“**Events of Default**”):

- (a) the Borrower’s failure to pay any amount due hereunder when due and payable;
- (b) any covenant, condition precedent, payment obligation, or other term or condition of this Term Sheet is not complied with or fulfilled to the satisfaction of the Lender;
- (c) the seeking or support by the Borrower of, or the issuance of, any court order (in the CCAA Proceedings or otherwise) which is adverse or

potentially adverse to the interests of the Lender;

- (d) the issuance of any Court order lifting or terminating (in whole or in part) the stay of proceedings in the CCAA Proceedings, or discontinuing, dismissing or otherwise terminating the CCAA Proceedings;
- (e) the issuance of any court order staying, reversing, vacating or modifying the terms of the Initial Order or the ARIO, the DIP Facility or the Interim Financing Charge without the Lender's consent;
- (f) the service or filing of a notice of appeal, application for leave to appeal, or an appeal in respect of the Initial Order or the ARIO, in each case if the notice of appeal, application for leave to appeal or appeal is not being actively defended by the Borrower or if the appeal is granted;
- (g) the occurrence of an event that will, in the opinion of the Lender, materially impair the Borrower's financial condition, operations or ability to perform under this Term Sheet or any order of the Court;
- (h) failure by the Borrower to comply with the Initial Order or the ARIO;
- (i) the occurrence of any material adverse change in: (i) the business, operations, or financial condition of the Borrower; (ii) the Property of the Borrower; (iii) the Interim Financing Charge, including its relative priority; (iv) the ability of the Borrower to perform its obligations to the Lender or to any person under any material contract; or (v) the Lender's ability to enforce any of its rights or remedies against the Property or for the obligations of the Borrower to be satisfied from the realization thereof;
- (j) the Borrower becomes bankrupt or subject to a proceeding under the BIA, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed in respect of the Borrower or any of its Property;
- (k) the acceptance of any offer resulting from the SISP, or the filing of a motion seeking approval of the Court to accept any such offer, unless the total indebtedness owing by the Borrower under the DIP Facility is to be paid in full in cash or other immediately available funds upon completion of the transaction resulting from such offer, or unless the Lender has consented to such acceptance or filing in writing;
- (l) the sale, transfer, assignment, conveyance or lease of substantially all of the Property, except pursuant to a transaction resulting from the SISP or as may be otherwise approved by the Lender in writing;
- (m) the filing of any plan of reorganization, compromise, arrangement or liquidation to which the Lender does not consent;
- (n) the commencement of any claim, action, proceeding, application, motion, defense or other contested matter the purpose of which is to seek or the result of which would be to obtain any order, judgment,

determination, declaration or similar relief: (i) invalidating, setting aside, avoiding, or subordinating the obligations of the Borrower under the DIP Facility, the Interim Financing Charge or its priority; (ii) for monetary, injunctive or other relief against the Lender or the Property; or (iii) preventing, hindering or otherwise delaying the exercise by the Lender of any of its rights and remedies hereunder, pursuant to the Initial Order or the ARIO or under applicable law, or the enforcement or realization by the Lender against any of the Property.

14. ~~15.~~ Remedies and Enforcement:

Following the occurrence of an Event of Default, and upon five (5) business days' written notice to the Borrower and the Monitor, the Lender shall have the right, subject to the Lender obtaining an Order from the Court lifting the stay under the CCAA Proceedings, to:

- (a) terminate the DIP Facility;
- (b) enforce the Interim Financing Charge and realize on the Borrower's Property and any other collateral securing the DIP Facility;
- (c) exercise the rights and powers of a secured lender and mortgagee pursuant to the *Personal Property Security Act* (Ontario), the *Mortgages Act* (Ontario) or any legislation of similar effect; and
- (d) exercise all such other rights and remedies available to the Lender under this Term Sheet, the Initial Order, the ARIO, any other order of the Court or applicable law.

No failure or delay on the part of the Lender in exercising any of its rights and remedies shall be deemed to be a waiver of any kind.

15. ~~16.~~ Evidence of Indebtedness:

The Lender shall maintain records evidencing the DIP Facility. The Lender's accounts and records shall constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Lender under the DIP Facility.

16. ~~Amendment and Restatement:~~

This Term Sheet amends and restates the Original Term Sheet and is not a novation of the Original Term Sheet. All indebtedness, liabilities and obligations of the Borrowers under the Original Term Sheet shall continue as obligations under this Term Sheet and this Term Sheet shall not evidence or result in a novation of such indebtedness, liabilities or obligations.

17. Further Assurances:

The Borrower will, at its own expense and promptly on demand by the Lender at any time, do such acts and things and execute and deliver such deeds and documents as the Lender may request to give effect to any of the provisions set out hereunder.

18. Assignment:

The Borrower shall not assign this Term Sheet or any of the provisions set out herein without the prior written consent of the Lender. The Lender may assign or sell its rights or obligations with respect to this Term Sheet to any person without the prior written consent of the Borrower.

19. Governing Law:

The DIP Facility and the provisions set out herein shall be governed by and construed in all respects in accordance with the laws of Ontario and the laws of

Canada applicable therein.

20. Currency: All references to currency in this Term Sheet are references to Canadian Dollars.

21. Acceptance: This Term Sheet is open for acceptance until 5:00 p.m. (Toronto time) on ~~April 26~~ June 2, 2023. A copy of this Term Sheet, countersigned by the Borrower, may be delivered by electronic transmission or personal delivery.

[Signature Page Follows]

Dated ~~this 27th day~~ of ~~April, 2023~~ the date first written above.

1000492681 ONTARIO INC.

By: _____

Name: Desmond D'Silva

Title: President

I have authority to bind the Corporation.

ACCEPTANCE

TO: 1000492681 ONTARIO INC.

For good and valuable consideration received, Plant-Based Investment Corp. accepts and agrees to comply with the provisions of the Term Sheet set out above.

| Dated this ___ day of ~~April~~June, 2023.

PLANT-BASED INVESTMENT CORP.

By: _____

Name: Paul Crath

Title: Chief Executive Officer

I have authority to bind the Corporation.

Document comparison by Workshare Compare on Friday, June 2, 2023 4:57:18 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/69987655/1
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Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
<u>Moved from</u>	
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Style change	
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Moved deletion	
Inserted cell	
Deleted cell	
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Padding cell	

Statistics:	
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Insertions	56
Deletions	70
Moved from	3
Moved to	3
Style changes	0
Format changes	0

Total changes	132
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**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)
Proceeding commenced at TORONTO

AFFIDAVIT OF PAUL CRATH
(SWORN JUNE 6, 2023)

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
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Tel: 403.298.2418

Lawyers for the Applicant

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE JUSTICE CONWAY)
)
)
) THURSDAY, THE 8TH
) DAY OF JUNE, 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.

Applicant

SALE AND INVESTMENT SOLICITATION PROCESS ORDER

THIS MOTION, made by the Plant-Based Investment Corp. (the “**Applicant**”) seeking, among other relief, an Order (i) approving the sale and investment solicitation process (the “**SISP**”) attached hereto as Schedule “A”; and (ii) authorizing and directing the Monitor to conduct the SISP that was heard this day by way of judicial conference via Zoom at Toronto, Ontario in accordance with the changes to the operations of the Commercial List.

ON READING the affidavit of Paul Crath sworn June 6, 2023 and the Exhibits thereto (the “**Crath Affidavit**”), the second report of msi Spergel inc., in its capacity as monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant and counsel for the Monitor, no one appearing for any other party although duly served as appears from the affidavit of service of Darlene Moffett dated June 6, 2023, filed,

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the SISP.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to take such steps as it deems necessary or advisable to carry out and perform its obligations under the SISP.

5. **THIS COURT ORDERS** that the Monitor and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP as determined by this Court.

6. **THIS COURT ORDERS** that the Monitor and the Applicant and their respective counsel be and are hereby authorized but not obligated, to serve or distribute this SISP Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the SISP to any Person (as defined in the Initial Order

dated May 1, 2023, as amended and restated) or interested party that the Monitor or the Applicant consider appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and the Applicant are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicant’s records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property (“**Sale**”) or investment in the Business (“**Investment**”). Each Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale or Investment, and if it does not complete a Sale or Investment, shall return all such information to the Monitor and the Applicant, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Property of Business acquired pursuant to the Sale or invested in pursuant to the Investment in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Monitor and the Applicant, or ensure that all other personal information is destroyed.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized to disclose any information or documentation contained in the Applicant's records (including, without limitation, confidential information or documentation) regarding the Applicants' assets, undertakings and properties, including the Applicant's business and operations (collectively, the "**Property and Business Information**") to Potential Bidders who have signed an NDA, provided that the Monitor will only disclose Property and Business Information that the Monitor determines is reasonably necessary to permit a Qualified Bidder to conduct due diligence regarding a potential Transaction or that is otherwise necessary to implement the SISP or a potential Transaction.

9. **THIS COURT ORDERS** that each Recipient to whom Property and Business Information is disclosed under the SISP will maintain and protect the confidentiality of such Property and Business Information and limit the use of such Property and Business Information to its evaluation of the Opportunity in accordance with the terms of the SISP and the applicable NDA and, if the Opportunity is no longer being considered by the Recipient, if the Recipient does not complete a Transaction under the SISP or otherwise at the request of the Monitor, such Recipient will return all such Property and Business Information to the Monitor or alternatively destroy such Property and Business Information and provide confirmation of its destruction of so requested by the Monitor. The Successful Bidder(s) will maintain and protect the confidentiality of the Property and Business Information and, upon the closing of any Transaction(s), will be entitled to use the Property and Business Information provided to them that is related to the Property or the Business subject to the Transaction(s) in a matter that is in all material respects identical to the prior use of such Property and Business Information by the Applicant and the Monitor, and will return all other Property and Business Information to the Monitor or

alternatively destroy such Property and Business Information and provide confirmation of its destruction if so requested by the Monitor.

GENERAL

10. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, 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.

12. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the 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.

13. **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.

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

Sale and Investment Solicitation Process

Introduction

1. On May 1, 2023, Plant-Based Investment Corp. (the “**Applicant**”) was granted an initial order (as amended or amended and restated on May 11, 2023, and as may be further amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things:
 - (a) stayed all proceedings against the Applicant, its assets and its directors and officers;
 - (b) appointed msi Spergel Inc. as the monitor of the Applicant (in such capacity, the “**Monitor**”);
 - (c) authorized the Applicant to enter into a debtor-in-possession financing facility (the “**DIP Facility**”) with 1000492681 Ontario Inc. (the “**DIP Lender**”) pursuant to a Term Sheet dated April 27, 2023 (the “**DIP Term Sheet**”), and granted a charge in favour of the DIP Lender (the “**DIP Charge**”) over all of the Applicant’s present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof to secure the amounts outstanding under or in connection with the DIP Facility; and
 - (d) authorized the Applicant to pursue all avenues of sale or investment of its assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.
2. Further to the Applicant’s restructuring efforts and the terms of the DIP Facility, the Monitor will conduct the sale and investment solicitation process (the “**SISP**”) described herein, with the assistance of the Applicant, and pursuant to a Court order dated June 8, 2023 (the “**SISP Order**”). The SISP is intended to solicit proposals to purchase or invest in some or all of the Applicant’s assets, undertakings, and properties (collectively, the “**Property**”), including the Applicant’s business and operations (the “**Business**”).

Opportunity

3. Subject to approval of the Court, the Monitor will conduct the SISP described herein, to solicit proposals to purchase or invest in some or all of the Property, including the Business (the “**Opportunity**”).
4. The Opportunity may include one or more transactions involving the recapitalization, investment in, arrangement or reorganization of the Applicant or the Business as a going concern, or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
5. This document describes the SISP, including the manner in which interested parties: (a) may gain access to due diligence materials concerning the Applicant, the Business, and the Property; (b) the manner in which an interested party may become a Qualified Bidder (as defined below); (c) the process for the selection of one or more Successful Bidder(s) (as

defined below); and (d) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of one or more Successful Bid(s).

6. In the SISP, (a) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in this SISP falls on a day that is not a Business Day, then such date will be extended until the next Business Day; (ii) the words “include”, “includes”, and “including” will be deemed to be followed by the phrase “without limitation”; (iii) for certainty, the term “Property” includes each loan included advanced by the Applicant to a borrower (each, a “**Loan**”), the rights of the Applicant under the credit, security and other documentation governing each Loan and information regarding each borrower, guarantor or other obligor under each Loan contained in the records of the Applicant.

Timeline

7. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement Date	No later than June 13, 2023
Bid Deadline	5:00 p.m. Eastern Standard Time on the date that is six weeks from the Commencement Date
Settle and execute one or more binding agreement(s) regarding the Successful Bid(s)	No later than two weeks from the Bid Deadline
Hearing of Sale Approval Motion (as defined below)	No later than 10 Business Days from the selection of the Successful Bid(s), subject to the availability of the Court

8. Subject to any order of the Court, the dates set out in the SISP may be extended by the Monitor with the consent and approval of the Applicant and after consultation with the DIP Lender.

Solicitation of Interest: Notice of SISP

9. As soon as reasonably practicable, but in any event by no later than **June 13, 2023**:

- (a) the Monitor, in consultation with the Applicant, will prepare a list of potential bidders, including: (i) parties that have approached the Applicant or the Monitor indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Applicant, in consultation with the Monitor, believes may be interested in purchasing all or part of the Business and/or Property or investing in the Applicant pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
 - (b) the Monitor will arrange for a notice of SISP (and such other relevant information which the Monitor, in consultation with the Applicant, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition), and any other newspaper or journal as the Monitor, in consultation with the Applicant, considers appropriate, if any;
 - (c) the Monitor will issue a press release with Canada Newswire or a comparable newswire entity setting out the information contained in the Notice and such other relevant information which the Monitor, in consultation with the Applicant, considers appropriate, designating dissemination in Canada; and
 - (d) the Monitor, in consultation with the Applicant, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicant and the Monitor (an “**NDA**”).
10. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than June 13, 2023 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Applicant or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

- 11. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), must provide to the Applicant and the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
- 12. The Monitor, in consultation with the Applicant, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered a NDA to the Monitor and provided information as to their financial wherewithal to close a transaction such access to due diligence material and information relating to the Property and Business as the Applicant or the Monitor deem appropriate. Due diligence shall include access to an electronic data room maintained by the Monitor containing information about the Applicant and the Business (the “**Data Room**”), and may also include other matters which a Potential Bidder may reasonably request and as to which the Applicant, in its reasonable business judgment and after consulting with the Monitor, may agree. The Monitor will designate a

representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicant nor the Monitor will be obligated to furnish any information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicant, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information. Neither the Applicant nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale of the Property and the Business.

13. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicant.

Formal Binding Offers

14. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicant or its Property or Business (a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Monitor at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by the Monitor not later than **5:00 PM (Eastern Time) on the date that is four weeks from the Commencement Date** or as may be modified in the Bid process letter that may be circulate by the Monitor to Potential Bidders, with the approval of the Applicant and in consultation with the DIP Lender (the “**Bid Deadline**”):
 - (a) the Bid must be a binding offer to:
 - (i) acquire all, substantially all, or a portion of the Property (a “**Sale Proposal**”);
 - (ii) to recapitalize, invest in, arrange or reorganize the Applicant, the Property or the Business (an “**Investment Proposal**”); and/or
 - (iii) some combination of a Sale Proposal and an Investment Proposal (a “**Hybrid Proposal**”).
 - (b) the Bid (either individually or in combination with other Bids that make up one Bid) is an offer to purchase or make an investment in some or all of the Applicant or its Property or Business and is consistent with any necessary terms and conditions established by the Applicant and the Monitor and communicated to Bidders;
 - (c) the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, or the Back-Up Bidder (as defined below), its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
 - (d) the Bid includes duly authorized and executed transaction agreements which clearly state the purchase price, investment amount and any other key economic terms

expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto;

- (e) the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicant and the Monitor to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;
- (f) the Bid is not conditioned on: (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing;
- (g) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such Bid;
- (h) for a Sale Proposal, the Bid includes:
 - (i) the Purchase Price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iii) the allocation of the Purchase Price (or range if not finally determined) between the Loans and/or the other Property of the Applicant that is expected to be subject to the Transaction;
 - (iv) a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - (v) the Bidder’s proposal for addressing ongoing servicing and administration of the Loans that are subject to the proposed transaction, including with respect to requests or requirements for further funding;
 - (vi) a description of the conditions and approvals required to complete the closing of the transaction;
 - (vii) a description of those liabilities and obligations which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (viii) any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction; and
 - (ix) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the Purchase Price, payable upon submission of the Bid;
- (i) for an Investment Proposal, the Bid includes:
 - (i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

- (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicant in Canadian dollars;
 - (iii) the underlying assumptions regarding the pro forma capital structure;
 - (iv) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
 - (v) a description of the conditions and approvals required for to complete the closing of the transaction;
 - (vi) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (vii) any other terms or conditions of the Investment Proposal; and
 - (viii) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder;
- (j) for a Hybrid Proposal, the Bid includes:
- (i) the information set out in subparagraph 14(h) above regarding the portion of the Hybrid Proposal that constitutes a Sale Proposal; (ii) the information set out in subparagraph 14(i) above regarding the portion of the Hybrid Proposal that constitutes an Investment Proposal; and (iii) such other information as may be reasonably requested by the Monitor.
- (k) the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicant prior to submitting the Bid;
 - (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicant or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicant;
- (l) the Bid is received by the Bid Deadline; and
- (m) the Bid includes confirmation that, if the Bid is the Successful Bid and the Applicant has cash requirements in excess of the amounts available to it under the DIP Facility to get to a closing of the transaction then the Bidder will advance funds to the Applicant to allow it to fund their cash requirements by way of non-revolving facility in a manner that does not impair the priority of the DIP Facility or otherwise is satisfactory to the DIP Lender.
15. Following the Bid Deadline, the Monitor will assess the Bids received. The Monitor will designate the most competitive Bids that comply with the foregoing requirements to be

“Qualified Bids”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only Bidders whose bids have been designed as Qualified Bids are eligible to become the Successful Bidder(s).

16. The Monitor may waive strict compliance with any one or more of the requirements specified above and deem any non-compliant Bid to be a Qualified Bid; provided, however, that the Monitor shall not waive compliance with the requirements set out in paragraph 14 above without the consent of the DIP Lender.
17. The Monitor in its sole direction may, but is not obligated to, consult with the Applicant regarding the evaluation of Bids and designation of Bids as Qualified Bids.
18. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate.
19. If the Monitor, in consultation with the Applicant, is not satisfied with the number or terms of the Qualified Bids, the Monitor may, in consultation with the Applicant and with the approval of the Applicant, extend the Bid Deadline, or the Monitor may seek Court approval of an amendment to the SISP, in each case after consultation with the DIP Lender.
20. The Monitor may, in consultation with the Applicant if deemed necessary, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

Evaluation of Qualified Bids

21. The Monitor will review each Qualified Bid.
22. The Monitor in its sole direction may, but is not obligated to, consult with the Applicant regarding the evaluation of Qualified Bids.
23. A Qualified Bid will be evaluated based upon several factors including, without limitation: (a) the Purchase Price and the net value provided by such bid; (b) the identity, circumstances and ability of the Bidder to successfully complete the proposed transaction; (c) the proposed transaction documents; (d) factors affecting the speed, certainty, and value of the proposed transaction; (e) the assets included or excluded from the Bid; (f) the planned treatment of the Applicant’s stakeholders; (g) any related restructuring costs; and (h) the likelihood and timing of consummating the proposed transaction, each as determined by the Monitor.
24. If one of more Qualified Bids is received or so designated by the Monitor, the Monitor, exercising its reasonable judgment and with the assistance of the Applicant if requested, may select the most favourable Qualified Bid(s) (each a **“Successful Bid”**), whereupon the Monitor shall proceed to negotiate and settle the terms of a definitive Transaction agreement, with the applicable Bidder(s) who submitted a Successful Bid (each, a **“Successful Bidder”**). The terms of any such definitive Transaction agreement must be acceptable to the Monitor.

25. The Qualified Bidder putting forward the next most favourable Qualified Bid after the Successful Bid(s), as determined by the Monitor and the Applicant (the “**Back-Up Bidder**”), will be required to keep its offer open and available for acceptance until the closing of the Transaction contemplated by the Successful Bid.

Approval Motion for Successful Bid(s)

26. The Monitor will bring a motion before the Court (the “**Sale Approval Motion**”) for an order approving the Successful Bid(s) and authorizing the Applicant to enter into any and all necessary agreements regarding the Successful Bid(s) and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid(s).
27. All Qualified Bids other than the Successful Bid(s), will be deemed to be rejected by the Monitor and the Applicant on and as of the date of approval of the Successful Bid(s) by the Court.
28. The Sale Approval Motion will be held on a date to be schedule by the Court upon motion by the Applicant or the Monitor. The Approval Motion may be adjourned or rescheduled by the moving party, on notice to the Successful Bidder(s), by an announcement of the adjourned date at the Sale Approval Motion and without the need for any further notice thereof, provided that in no circumstance will the Sale Approval Motion, be adjourned or rescheduled beyond September 1, 2023, without the consent of the Successful Bidder(s).

Deposits

29. All cash Deposits will be retained by the Monitor and invested in an interest-bearing trust account. If there is one or more Successful Bid(s), the Deposit (plus accrued interest) paid by the Successful Bidders(s) whose bid is approved at the Sale Approval Motion will be applied in partial satisfaction of the consideration to be paid or provided by the Successful Bidder under the Successful Bid upon closing of the approved Transaction and will be non-refundable. The Deposits (plus applicable interests) of Qualified Bidders not selected as Successful Bidders(s) will be returned to such parties within 5 Business Days of the date upon which the Successful Bid(s) is approved by the Court. If there is no Successful Bid, subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the Qualified Bidders within 5 Business Days of the date upon which the SISP is terminated in accordance with its terms.
30. If a Successful Bidder(s) breaches its obligations under the terms of the SISP, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

Approvals

31. For the avoidance of doubt, the approvals required under the terms hereof are in addition to, and not in substitution for, any other approvals required under any statute or as otherwise required at law in order to implement a Successful Bid.

“As Is, Where Is”

32. Any Transaction will be on an “as is, where is” basis at the time of closing and without surviving representations or warranties of any kind, nature, or description by the Applicant or the Monitor or any of their affiliates, advisors, agents or representatives, except to the extent otherwise expressly provided under a definitive agreement with respect to a Transaction with a Successful Bidder executed and delivered by the Applicant and approved by the Court. None of the Applicant or the Monitor, or any of their affiliates, advisors, agents or representatives, makes any representation or warranty as to title, description, fitness for purpose, merchantability, quantity, conditions or quality of the Property, the Business, or the accuracy or completeness of the information provided to any party under the SISP or otherwise, including the information contained in any of the Teaser, and the Data Room. Each party that participates in the SISP shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation regarding the Property, the Business and otherwise regarding the Applicant. It shall be the Successful Bidder’s sole responsibility to obtain, at its own expense, any consents necessary to close a Transaction and any further documents or assurances which are necessary or desirable in the circumstance. Without limiting the generality of the foregoing, any and all conditions, warranties, and representations expressed or implied pursuant to the Sale of Goods Act (Ontario), or any similar legislation in force outside of Ontario, does not apply to any Transaction and will be waived by the Successful Bidder(s).

No Obligation to Conclude a Transaction

33. The highest Bid received under the SISP will not necessarily be accepted. In addition, at any time during the SISP, the Monitor may terminate the SISP and will provide notice of such decision to all Qualified Bidders.

Advice and Directions from the Court

34. At any time during the SISP, the Monitor may apply to the Court for advice and directions and with respect to the discharge of its powers and duties hereunder.

Confidentiality and Access to Information

35. All discussions regarding a Sale Proposal, Investment Proposal, Hybrid Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicant be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
36. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicant, the Monitor and such other Bidders or Potential Bidders in connection with the SISP, except to the extent the Applicant, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Potential Bidders or Bidders.

Supervision of the SISP

37. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
38. This SISP does not, and will not, be interpreted to create any contractual or other legal relationship between the Applicant or the Monitor and any Potential Bidder, any Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicant.
39. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Applicant, the DIP Lender or any other creditor or other stakeholder of the Applicant, for any act or omission related to the process contemplated by this SISP, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Monitor. By submitting a Bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.
40. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
41. Without limiting in any way the intent and effect of the applicable provisions of the DIP Facility in respect of the SISP, the Applicant and the Monitor shall have the right to modify the SISP (including, without limitation, pursuant to the Bid process letter) following consultation with the DIP Lender if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Schedule “1”

Address of Monitor

To the Monitor:

msi Spergel Inc.
200 Yorkland Blvd., Suite 1100
Toronto, ON M2J 5C1

Attention: Mukul Manchanda, Philip Gennis

Email: mmanchanda@spergel.ca
pgennis@spergel.ca

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

SALE AND INVESTMENT SOLICITATION
PROCESS ORDER
(MOTION RETURNABLE JUNE 8, 2023)

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Lawyers for the Applicant

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 8TH
)	
JUSTICE CONWAY)	DAY OF JUNE , 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 June 6, 2023 (the “**Crath Affidavit**”), and the Exhibits thereto, the Second Report of msi Spergel inc., the monitor of the Applicant (in such capacity, the “**Monitor**”), and on hearing the submissions of counsel to PBIC and counsel to 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) with the written consent of the Monitor, to dispose of 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 August 25, 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.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **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, 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.

22. **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**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

23. **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 21 of this Order.

APPOINTMENT OF MONITOR

24. **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.

25. **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.

26. **THIS COURT ORDERS** that the Applicant shall not advance funds to entities in which it has invested without the written approval of the Monitor.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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

33. **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 40 and 42 hereof.

DIP FINANCING

34. **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 \$1,000,000 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.

35. **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 and as amended and restated on June 1, 2023 (the “**DIP Term Sheet**”), filed.

36. **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.

37. **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 40 and 42 hereof.

38. **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.

39. **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

40. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Directors' 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); and
- (c) Third – Directors' Charge (to the maximum amount of \$100,000).

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the DIP Lender's Charge, or the Directors' 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.

42. **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.

43. **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.

44. **THIS COURT ORDERS** that the Administration Charge, the Definitive Documents and the DIP Lender's Charge, and the Directors' 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.

45. **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

46. **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.

47. 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

48. 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.

49. 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”).

50. **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 (3rd) business day following the date of forwarding thereof, if sent by ordinary mail.

51. **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

52. **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.

53. **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.

54. **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.

55. **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.

56. **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.

57. **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.

58. **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**

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TAB 5

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 44⁸TH
JUSTICE CONWAY)
DAY OF ~~MAY~~JUNE, 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~~June 6, 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~~Second Report of msi Spergel inc., the monitor of the Applicant (in such capacity, the "Monitor"), ~~and on hearing the submissions of counsel to PBIC and counsel to 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) with the written consent of the Monitor, to dispose of non-material assets not exceeding \$100,000 in any one transaction or \$200,000 in the aggregate;
- (b) ~~(a)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) ~~(b)~~ 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~~August 25, 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.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. 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, 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.

22. 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") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

23. 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 21 of this Order.

APPOINTMENT OF MONITOR

24. ~~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.

25. ~~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.

26. THIS COURT ORDERS that the Applicant shall not advance funds to entities in which it has invested without the written approval of the Monitor.

27. ~~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.

28. ~~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.

29. ~~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.

30. ~~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.

31. ~~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.

32. ~~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

33. ~~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 ~~3640~~ and ~~3842~~ hereof.

DIP FINANCING

34. ~~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~~ 1,000,000 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.

35. ~~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 and as amended and restated on June 1, 2023 (the “**DIP Term Sheet**”), filed.

36. ~~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.

37. ~~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~~40 and ~~38~~42 hereof.

38. ~~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.

39. ~~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

40. ~~36.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge ~~and~~, the DIP Lender's Charge, and the Directors' 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); and
- (c) Third – Directors' Charge (to the maximum amount of \$100,000).

41. ~~37.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, ~~or~~ the DIP Lender's Charge, or the Directors' 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.

42. ~~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.

43. ~~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.

44. ~~40.~~ **THIS COURT ORDERS** that the Administration Charge, the Definitive Documents and the DIP Lender's Charge, and the Directors' 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.

45. ~~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

46. ~~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.

47. ~~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

48. ~~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.

49. ~~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**”).

50. ~~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 (3rd) business day following the date of forwarding thereof, if sent by ordinary mail.

51. ~~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

52. ~~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.

53. ~~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.

54. ~~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.

55. ~~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.

56. ~~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.

57. ~~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.

58. ~~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**

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Document comparison by Workshare Compare on Tuesday, June 6, 2023 12:06:00 PM

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Deletions	53
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Moved to	2
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Format changes	0
Total changes	130

TAB 6

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) ~~WEEKDAY~~ THURSDAY, THE #8TH
JUSTICE — CONWAY) ~~DAY OF MONTH, 20YR~~ JUNE,
) 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]~~ June 6, 2023 (the "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~~ the Second Report of msi Spergel inc., the monitor of the Applicant (in such capacity, the "Monitor"), and on hearing the submissions of counsel ~~for [NAMES], no one appearing for [NAME][†] although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME]~~ to PBIC and counsel to ~~act as~~ the Monitor, ;

SERVICE

[†] ~~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 validated² 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

² ~~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 system³ 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

³~~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~~⁴ 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 business or operations, and~~ with the written consent of the Monitor, to dispose of ~~redundant or~~ non-material assets not exceeding \$•100,000 in any one transaction or \$•200,000 in the aggregate⁵;

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

- (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

~~⁵Section 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 or be available at the initial CCAA hearing.~~

hours¹⁷ prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, 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.

NO STAY OF PROCEEDINGS ~~AGAINST THE APPLICANT OR THE PROPERTY~~

15. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~ August 25, 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

21. ~~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,⁷ 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.

22. ~~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")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●100,000, as security for the indemnity provided in paragraph ~~{20}~~21 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~40 and ~~{40}~~42 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).~~

~~⁷The 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.~~

~~⁸Section 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.~~

23. ~~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~~21 of this Order.

APPOINTMENT OF MONITOR

24. ~~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.

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

26. ~~25.~~ THIS COURT ORDERS that the Applicant shall not advance funds to entities in which it has invested without the written approval of the Monitor.

27. 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.

28. ~~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.

29. ~~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.

30. ~~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.

31. ~~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.~~

32. ~~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

33. ~~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}~~40 and ~~{40}~~42 hereof.

DIP FINANCING

34. ~~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 \$●1,000,000 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.

35. ~~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]~~ (the "~~Commitment Letter~~" April 27, 2023 and as amended and restated on June 1, 2023 (the "DIP Term Sheet")), filed.

36. ~~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.

37. ~~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~~ 40 and ~~40~~ 42 hereof.

38. ~~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.

39. ~~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

40. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the Administration Charge~~ and the DIP Lender's Charge, and the Directors' Charge, as among them, shall be as follows⁹:

- (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); and
- (c) Third — Directors' Charge (to the maximum amount of \$~~●~~100,000).

41. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge~~—~~ or the DIP Lender's Charge, or the Directors' Charge

⁹~~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.~~

(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.

42. ~~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.

43. ~~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.

44. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the~~ Administration Charge, ~~the Commitment Letter,~~ the Definitive Documents and the DIP Lender's Charge, and the Directors' 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.

45. ~~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

46. 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.

47. 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

48. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (ia) 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**b**) within five (5) days after the date of this Order, (Ai) make this Order publicly available in the manner prescribed under the CCAA, (Bii) 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 (Ciii) 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.

49. ~~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”).

50. ~~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 (3rd) business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. **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

52. ~~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.

53. ~~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.

54. ~~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.

55. ~~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.

56. ~~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.

57. ~~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.

58. **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

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Document 2 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/70299055/1
Description	#70299055v1<Legal> - Amended and Restated Initial Order (As Served)
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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
(Returnable June 8, 2023)**

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