

**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.**

**SECOND REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS MONITOR OF  
PLANT-BASED INVESTMENT CORP.**

**June 6, 2023**

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## **APPENDICES**

- A. Initial Order dated May 1, 2023
- B. First Report of the Monitor dated May 9, 2023 (without appendices)
- C. Amended and Restated Initial Order dated May 11, 2023
- D. Copy of Correspondence from Reconstruct LLP to Monitor
- E. Copy of responding correspondence from PBIC Counsel to Reconstruct LLP
- F. Proposed Sales Process
- G. Updated Cash Flow Forecast
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## I. INTRODUCTION

1. Pursuant to an order (the “**Initial Order**”) of Madam Justice Conway of the Superior Court of Ontario made on May 1, 2023, Plant-Based Investment Corp. (“**PBIC**” or the “**Company**”) was granted protection under the *Companies Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”) and msi Spergel inc., (“**Spergel**”) was appointed as monitor (the “**Monitor**”). A copy of the Initial Order is attached hereto as **Appendix “A”**.
2. The Monitor engaged Gowling WLG (Canada) LLP as its independent legal counsel (the “**Monitor’s Counsel**”).
3. Pursuant to the terms of the Initial Order, the Court:
  - a) granted a stay of proceedings until May 11, 2023; and
  - b) granted a charge:
    - i) in the amount of \$100,000 (the “**Administration Charge**”) on the Company’s current and future property, assets, and undertakings (the “**Property**”) to secure the fees and disbursements of the Company’s Counsel as well as the fees and disbursements of the Monitor and the Monitor’s Counsel; and
    - ii) in the amount of \$200,000 (the “**DIP Lender’s Charge**”) to finance the Company’s working capital requirements and other general corporate purposes and capital expenditures.
4. The Initial Order also set May 11, 2023, as the date for the comeback motion in these proceedings (the “**Comeback Hearing**”).
5. Further to its appointment as Monitor, Spergel in its capacity as Monitor filed its First Report (the “**First Report**”) in support of the relief sought by the Company at

the May 11<sup>th</sup> hearing. Attached to this Second Report as **Appendix “B”** is a copy of the Monitor’s First Report without appendices.

6. At the hearing held May 11, 2023, an Amended and Restated Initial Order was granted by the Honourable Justice Conway. Attached to this Second Report as **Appendix “C”** is a copy of the Amended and Restated Initial Order dated May 11, 2023.
7. The Amended and Restated Initial Order provided, inter alia for the following:
  - a) an increase in the Administration Charge not to exceed \$250,000;
  - b) an increase in the Dip Loan not to exceed \$500,000; and
  - c) an extension of the Stay of Proceedings to June 9, 2023

## **II. PURPOSE OF THIS REPORT AND DISCLAIMER**

8. The purpose of this second report (the **“Second Report”**) is to provide the Court with information pertaining to:
  - a) the activities of the Monitor since its First Report;
  - b) the Company’s activities since the granting of the Amended and Restated Initial Order;
  - c) stakeholder inquiries and communications;
  - d) the Monitor’s comments and report on the Company’s updated cash flow projection for the period through to and including August 25, 2023 (the **“Updated Cash Flow Projection”**);

- e) the Company's request for an extension of the Stay Period from June 9, 2023, up to and including August 25, 2023, to allow for the completion of a Sale and Investment Solicitation Process ("**SISP**")
- f) the Company's request for an increase in the amount of the Administration Charge from \$250,000 to \$500,000;
- g) the Company's request for an increase in the DIP Lender's Charge from \$500,000 to \$1,000,000;
- h) correcting a typographical error in the Monitor's First Report relative to Graham Simmonds as explained to the Court at the hearing held on May 11, 2023

*Restrictions and Disclaimer*

- 9. In preparing this Second Report, the Monitor has relied upon certain information provided to it by the Company's management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Public Enterprises or International Financial reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.
- 10. The cash flow forecast and projections in this Second Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as to how closely the actual cash flows achieved will correspond to the projection. Any party wishing to place reliance on the financial information should perform its own due diligence.

11. This Second Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the continuing COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time and the Monitor has not endeavoured to do so in this Second Report.
12. Parties using this Second Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes and consequently it should not be used for any other purpose.
13. This Second Report should be read in conjunction with the Affidavit of Paul Crath sworn June 6, 2023 (the "**Crath Affidavit**") as such Affidavit contains information concerning the proposed Sale and Investment Solicitation Process ("**SISP**"), the proposed amended and restated debtor-in-possession term sheet, the proposed sale of non-material assets, a proposed charge in favour of the current directors and officers of PBIC, and the proposed extension of the stay of proceedings to and including August 25, 2023.
14. Court materials in these proceedings can be found on Spergel's Case Website at <https://www.spergelcorporate.ca/engagements/plant-based-investments-inc/>.
15. All references to dollars in this Second Report are in Canadian currency unless otherwise noted.

### III. BACKGROUND AND APPOINTMENT

16. PBIC is a public corporation incorporated under the *Canada Business Corporations Act* (the “**CBCA**”) that is listed on the Canadian Securities Exchange (the “**Exchange**”) under the symbol “PBIC”. Its head office is located in Toronto, Ontario.
17. PBIC is an investment corporation that 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**”).
18. 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.
19. PBIC has no funded debt. Its liabilities, which exceed \$5,000,000, are materially comprised of accounts payable and contingent litigation claims.
20. As a result of the secular downturn in the market for Plant-Based Investments, PBIC is facing a liquidity crisis. Its total asset value has declined \$25,000,000 over the past four years. PBIC is effectively out of cash and its remaining investments are rapidly losing value because PBIC cannot financially support them.



21. On or around March 6, 2023, the Ontario Securities Commission issued a “failure to file” cease trade order (“**CTO**”) against PBIC, for failure to make timely filing of audited annual financial statements for its 2022 fiscal year. PBIC cannot raise equity investment until the CTO is lifted.
22. The Company is of the view that there is significant value in certain of PBIC’s long-term, illiquid investments that must be protected through these proceedings and potential value in its status as a publicly traded investment company with material tax attributes.

#### **IV. CORRECTION OF TYPOGRAPHICAL ERROR IN MONITOR’S FIRST REPORT**

23. As confirmed to the Court at the hearing held May 11, 2023, in Paragraph 31(d) of the Monitor’s First Report, reference was made to Graham Simmonds as a former Officer and Director of PBIC. Mr. Simmonds is in fact a current director.

#### **V. ALLEGATIONS BY AD HOC CREDITOR/EQUITY HOLDER GROUP**

24. On or about the 30<sup>th</sup> day of May 2023, correspondence was received by the Monitor from Reconstruct LLP, Counsel for an ad-hoc group of creditors and equity holders purportedly comprising approximately twenty-five percent of the PBIC equity. Attached to this Second Report as **Appendix “D”** is a copy of the correspondence from Reconstruct LLP dated May 30, 2023 (the “**Reconstruct Letter**”).
25. The allegations impugned the basis for the filing of the CCAA proceedings as well as a number of pre-filing transactions completed by the Company. The Reconstruct Letter also adopted the position that neither a Sale Process nor a sale of non-material assets should be undertaken pending an investigation by the Monitor of certain pre-filing transactions.

26. Upon receipt of the Reconstruct Letter, the Monitor requested that a response be provided by the Company. Attached to this Second Report as **Appendix "E"** is a copy of the response by Counsel for the Company.
27. At a meeting held on June 6<sup>th</sup> between PBIC and Counsel for the ad-hoc group, an accommodation was reached whereby there would be no opposition to the relief being sought by PBIC. The Monitor is advised that the details of this accommodation will be described in a supplementary affidavit to be filed by Paul Crath.
28. In order to ensure that all parties have confidence in the SISP being proposed, the Company, in consultation with the Monitor, has included terms in the SISP which effectively place the Monitor in control of the process, as is set out in further detail below. In addition, the Company has included terms in the further Amended and Restated Initial Order being sought which require the Monitor's prior written approval of any sale of non-material assets and any payment of protective disbursements to investee entities.

## **VI. THE SALES PROCESS**

29. The development of a Sales and Investment Solicitation Process ("**SISP**") has been a complex process given the nature of the Company's assets, the challenges attributable to valuation, the tax implications, and the potential for the retention of the Company's status as a listed investment company with unique corporate objects, both of which may have significant value.
30. The proposed SISP is a flexible process, soliciting bids for the purchase or investment in some or all of the Company's assets, including its business, or a combination thereof. Attached to this Second Report as **Appendix "F"** is a copy of the SISP.

31. Subject to the Court’s approval, the SISP will be implemented by the Monitor in consultation with the Company, as and if requested.

32. The key aspects of the proposed SISP are summarized below:

Stage	Description	Proposed Timing
Preparation	<ul style="list-style-type: none"> <li>• Assemble due diligence information</li> <li>• Set-up of electronic Data Room</li> <li>• Identify Known Potential Bidders</li> <li>• Prepare Teaser Letter and template NDA</li> </ul>	No later than the Commencement Date
Notice and solicitation of interest	<ul style="list-style-type: none"> <li>• 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</li> <li>• Teaser Letter and NDA to be delivered to all Known Potential Bidders to notify them of the Opportunity</li> </ul>	Commencement Date: no later than June 13, 2023
Due diligence and bidding	<ul style="list-style-type: none"> <li>• In order to be considered as a Qualified Bidder, each Potential Bidder will deliver to the Monitor an executed NDA and required disclosure information</li> <li>• Qualified Bidders to be provided access to the Data Room</li> <li>• Bids due by Bid Deadline</li> <li>• Bids to indicate if a Sale Proposal, Investment Proposal or Hybrid Proposal and will include the required information and terms specified in the SISP</li> </ul>	<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>

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

33. 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.

34. 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.

35. The Monitor is of the view that the SISP will optimize the chances, in the particular circumstances facing the Company, of identifying the best possible transaction for the sale of the assets and/or business given the timing, flexibility, and marketing plan outlined in the SISP.

36. Given the nature of the Company’s assets, their value will undoubtedly decline failing the implementation the SISP as outlined in the summary excerpted above. In addition, the CCAA process is funded exclusively by the DIP Lender, which has

agreed to advance a further \$500,000 conditional upon the approval of the SISP. The total DIP Charge will therefore be increased to \$1,000,000.

## **VII. DIP INCREASE**

37. As noted, given the necessity that a thorough SISP be run and the lack of material Company revenues or other sources of funding, the need for the further interim financing represented by the increase to the DIP Loan is illustrated by the Updated Cash Flow Projection. As is set out in more detail below, the Monitor has reviewed the cash needs reflected in the Updated Cash Flow Projection and, following significant consultation with the Company, is satisfied that the increased funding requirements reflected are the minimum reasonably needed to see the SISP to a conclusion. The expenses proposed to be funded over the period of the Updated Cash Flow Projection are limited to reasonable and modest professional, management and consulting costs and “lights on” protective disbursements to a limited number of investee companies. The Monitor therefore supports the proposed increase to the DIP Loan and Charge.

## **VIII. CASH FLOW FORECAST**

38. The Company has prepared the Updated Cash Flow Projection for the period up to and including the week beginning August 28, 2023. The Updated Cash Flow Projection and the Company’s statutory report on the Updated Cash Flow Projection pursuant to Section 10(2)(b) of the CCAA are attached to this Second Report as **Appendices “G” and “H”**, respectively.
39. Attached to this Second Report as **Appendix “I”** is a copy of a Variance Analysis which provides clarity to the Opening Cash line item on the Cash Flow Projection. The variance results from a payment to a landlord not paid, HST, currency conversions and the timing for one advance to an investee not paid.

40. The Monitor has reviewed the Updated Cash Flow Projection which indicates relatively modest cash receipts. The cash flow requirement of the Company is anticipated to be predominantly covered by the additional DIP financing as well through the disposition 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., approval for which is being sought by the Company. These non-material assets consist of liquid, passive investments in publicly traded securities, whose value will not be increased by the SISP. The ability to monetize non-material assets is supported by the Monitor as it will enable the Company to reasonably maximize its cash flow without expending limited resources on Court approval.
41. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor is supporting the cash flow projection conditional upon the Monitor, in its sole discretion, being satisfied that the proposed operational disbursements as well as disbursements to investee companies are both justified and warranted under all circumstances. The Monitor's statutory report on the cash flow is attached to this Second Report as **Appendix "J"**.

**IX. DIRECTORS' CHARGE**

42. The Company is seeking a Directors' Charge as security for the Company's indemnification for possible liabilities that may be incurred by the current directors and officers, to a maximum of \$100,000. This charge is being sought given the impending expiration of the Company's current D&O insurance policy on June 9, 2023.
43. While the Company hopes that a tail policy may be purchased at a reasonable cost, such a tail policy may prove to be cost-prohibitive or contain unfavourable exclusions. In any event, the Company will be unable to bind coverage before the return date of the within motion.

44. In the circumstances, and for the reasons set out in the Crath Affidavit, the Monitor supports the granting of the modest Directors' Charge requested.

**X. STAY EXTENSION**

45. The stay of proceedings currently expires on June 9, 2023. The Company is requesting an extension of the Stay Period until August 25, 2023.

46. The Monitor supports the request for an extension of the Stay Period for the following reasons:

- a) the Company is acting in good faith and with due diligence;
- b) no creditor will be prejudiced if the extension is granted;
- c) it will allow the Monitor to implement and conclude the SISP in a commercially reasonable manner.

**XI. ACTIVITIES OF THE COMPANY AND THE MONITOR**

*Overview of Activities since the date of the First Report*

47. Since the date of the First Report, the Company has among other things:
- a) communicated with the Monitor and the Company's counsel on various matters in connection with the CCAA proceedings; and
  - b) worked with the Monitor to prepare the Updated Cash Flow Projection
48. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:

- a) maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
- b) assisting the Company with preparing the Updated Cash Flow Projection:
- c) meeting and corresponding with the Company and its legal counsel regarding the assets of the Company and development of a SISP as well as various other matters in connection with the Company's business and its CCAA proceedings;
- d) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings;
- e) responding to calls and enquiries from parties with a potential interest in acquiring the assets of the Company; and
- f) reviewing materials filed with the Court by the Company in respect of the CCAA proceedings and this Motion with respect to the relief requested.



**XI. CONCLUSIONS AND RECOMMENDATIONS**

49. Based upon the foregoing, the Monitor respectively recommends that this Court issue an order for the relief being sought by the Company, including but not limited to the extension of the Stay Period up to and including August 25, 2023.

Dated at Toronto, this 6<sup>th</sup> day of June 2023.

**msi Spergel inc.**

solely in its capacity as the CCAA Monitor  
of Plant-Based Investment Corp., and not in its  
personal or corporate capacities

Per:



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Philip H. Gennis, JD., CIRP., LIT



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

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

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

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

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

**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, and the Exhibits thereto (the "**Initial Crath Affidavit**"), and on hearing the submissions of counsel to PBIC, and on reading the consent of msi Spergel inc. to act as the proposed monitor of the Applicant (in such capacity, the "**Monitor**").

**SERVICE**

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

**DEFINITIONS**

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

## APPLICATION

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

## POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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.

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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

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

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.

## **STAY OF PROCEEDINGS**

11. **THIS COURT ORDERS** that until and including May 11, 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**

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

## **NO INTERFERENCE WITH RIGHTS**

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

## **CONTINUATION OF SERVICES**

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

## **NON-DEROGATION OF RIGHTS**

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

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### **APPOINTMENT OF MONITOR**

17. **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.

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

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

- (f) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

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

20. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (collectively, the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

21. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have

any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

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

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

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

#### **ADMINISTRATION CHARGE**

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

## **DIP FINANCING**

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

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

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

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

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

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

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

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

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

- (a) First - Administration Charge (to the maximum amount of \$100,000); and
- (b) Second – DIP Lender's Charge.

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including

as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

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

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

36. **THIS COURT ORDERS** that the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery, or performance of the Definitive Documents; and
  - (i) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

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

39. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: [www.spergelcorporate.ca/engagements](http://www.spergelcorporate.ca/engagements) (the “**Monitor’s Website**”).

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

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

### **COMEBACK HEARING**

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

## GENERAL

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

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

45. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

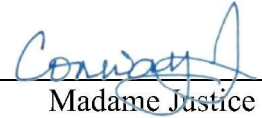
46. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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



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

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



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Madame Justice Conway

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

Court File No CV-23-00698826-00CL

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

Proceedings commenced at Toronto

**INITIAL ORDER**

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Lawyers for the Applicant

**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.**

**FIRST REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS MONITOR OF  
PLANT-BASED INVESTMENT CORP.**

**May 9, 2023**

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## **APPENDICES**

- A. Initial Order dated May 1, 2023
- B. Updated Cash Flow Projection
- C. Company's Report on Cash Flow
- D. Monitor's Report on Cash Flow

I. **INTRODUCTION**

1. Pursuant to an order (the “**Initial Order**”) of Madam Justice Conway of the Superior Court of Ontario made on May 1, 2023, Plant-Based Investment Corp. (“**PBIC**” or the “**Company**”) was granted protection under the *Companies Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”) and msi Spergel inc., (“**Spergel**”) was appointed as monitor (the “**Monitor**”). A copy of the Initial Order is attached hereto as **Appendix “A”**.
2. The Monitor engaged Gowling WLG (Canada) LLP as its independent legal counsel (the “**Monitor’s Counsel**”).
3. Pursuant to the terms of the Initial Order, the Court:
  - a) granted a stay of proceedings until May 11, 2023; and
  - b) granted a charge:
    - i) in the amount of \$100,000 (the “**Administration Charge**”) on the Company’s current and future property, assets, and undertakings (the “**Property**”) to secure the fees and disbursements of the Company’s Counsel as well as the fees and disbursements of the Monitor and the Monitor’s Counsel; and
    - ii) in the amount of \$200,000 (the “**DIP Lender’s Charge**”) to finance the Company’s working capital requirements and other general corporate purposes and capital expenditures.
4. The Initial Order also set May 11, 2023, as the date for the comeback motion in these proceedings (the “**Comeback Hearing**”).

## II. PURPOSE OF THIS REPORT AND DISCLAIMER

5. The purpose of this first report (the “**First Report**”) is to provide the Court with information pertaining to:
  - a) the activities of the Monitor since the date of the Initial Order;
  - b) background information regarding the Company and these proceedings;
  - c) the Company’s activities since the commencement of these proceedings;
  - d) the Monitor’s comments and report on the Company’s updated cash flow projection for the period through to and including June 9, 2023 (the “**Updated Cash Flow Projection**”);
  - e) the Company’s request for an extension of the Stay Period from May 11, 2023, up to and including June 9, 2023, to allow for the development of a Sale and Investment Solicitation Process (“**SISP**”)
  - f) the Company’s request for an increase in the amount of the Administration Charge from \$100,000 to \$250,000; and
  - g) the Company’s request for an increase in the DIP Lender’s Charge from \$200,000 to \$500,000.

### Restrictions and Disclaimer

6. In preparing this First Report, the Monitor has relied upon certain information provided to it by the Company’s management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Public Enterprises or International Financial

reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.

7. The cash flow forecast and projections in this First Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as to how closely the actual cash flows achieved will correspond to the projection. Any party wishing to place reliance on the financial information should perform its own due diligence.
8. This First Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the continuing COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time and the Monitor has not endeavoured to do so in this First Report.
9. Parties using this First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes and consequently it should not be used for any other purpose.
10. This First Report should be read in conjunction with the Affidavit of Paul Crath sworn April 28, 2023 (the "**Initial Affidavit**") and the Affidavit of Paul Crath sworn May 8, 2023 (the "**May 8<sup>th</sup> Affidavit**") as such Affidavits contain additional background information concerning the Company, and its structure, business



activities and shareholders as well as its intentions as the Company goes through these CCAA proceedings.

11. Court materials in these proceedings can be found on Spergel's Case Website at <https://www.spergelcorporate.ca/engagements/plant-based-investments-inc/>.

12. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

### III. **BACKGROUND AND APPOINTMENT**

13. PBIC is a public corporation incorporated under the *Canada Business Corporations Act* (the "**CBCA**") that is listed on the Canadian Securities Exchange (the "**Exchange**") under the symbol "PBIC". Its head office is located in Toronto, Ontario.

14. PBIC is an investment corporation that 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**").

15. 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.

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

17. As a result of the secular downturn in the market for Plant-Based Investments, PBIC is facing a liquidity crisis. Its total asset value has declined \$25,000,000 over the past four years. PBIC is effectively out of cash and its remaining investments are rapidly losing value because PBIC cannot financially support them.
18. On or around March 6, 2023, the Ontario Securities Commission issued a “failure to file” cease trade order (“**CTO**”) against PBIC, for failure to make timely filing of audited annual financial statements for its 2022 fiscal year. PBIC cannot raise equity investment until the CTO is lifted.
19. The Company is of the view that there is significant value in certain of PBIC’s long-term, illiquid investments that must be protected through these proceedings and potential value in its status as a publicly traded investment company with material tax attributes.

#### IV. **DEVELOPMENT OF A SALES PROCESS**

20. As of the date of this First Report, the Company has not fully developed a Sales and Investment Solicitation Process (“SISP”) but continues to work with its professional advisors in an effort to do so.
21. There are a number of factors that the Monitor strongly believes must be given considerable weight in the design and development of an appropriate SISP. These factors include, but are not limited to the following:
  - a) the complex nature of the Company’s assets;
  - b) the challenges attributable to valuation of the Company’s assets;
  - c) the tax implications of any sale of the Company’s assets; and
  - d) the potential for the retention of the Company’s status as a listed investment company with unique corporate objects, both of which may in fact have significant value.

22. The Monitor is of the view that the extension sought by the Company is reasonable in the circumstances and should provide the Company with enough time to formulate an appropriate SISP and seek the Court's approval thereof at a subsequent hearing. The Monitor believes that an appropriately formulated SISP will benefit all stakeholders and that the proposed extension is favourable to that end.
23. The Company has set a return date of May 26, 2023, to seek approval of a SISP and to seek a further extension of the Stay Period to permit the implementation of the approved SISP.

V. **CASH FLOW FORECAST**

24. The Company has prepared the Updated Cash Flow Projection for the period up to and including June 11, 2023. The Updated Cash Flow Projection and the Company's statutory report on the Updated Cash Flow Projection pursuant to Section 10(2)(b) of the CCAA are attached hereto as **Appendices "B" and "C"**, respectively.
25. The Monitor has reviewed the Updated Cash Flow Projection, which indicates no revenue. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court.
26. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor's statutory report on the cash flow is attached hereto as **Appendix "D"**.

VI. **SECURED CREDITORS**

27. Canada Revenue Agency (“**CRA**”) has a priority charge over the assets of the Company for unpaid source deductions in the approximate amount of \$37,000. This claim will be retired from the proceeds of the sale of Company assets as part of any approved SISP.

VII. **LITIGATION**

28. Canadabis Capital Inc., in a Statement of Claim issued July 12, 2022 (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.
29. On November 7, 2022, a 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.
30. 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.
31. Additional claims have been asserted, although not yet crystallized by Court proceedings as follows:

- a) Naeem Hukkawala, has demanded payment of the sum of \$75,000.00 supported by a purported settlement agreement;
- b) Sean Conacher, a former Director has demanded payment of the sum of \$1,155,000 for unpaid wages and severance;
- c) Michael Johnston, a former Officer, and Director has demanded payment of the sum of \$350,000 for unpaid wages and severance; and
- d) Graham Simmonds, a former Officer, and Director has demanded payment of the sum of \$105,000 for unpaid wages and severance.

VIII. **STAY EXTENSION**

- 32. The stay of proceedings currently expires on May 11, 2023. The Company is requesting an extension of the Stay Period until June 9, 2023.
- 33. The Monitor supports the request for an extension of the Stay Period for the following reasons:
  - a) the Company is acting in good faith and with due diligence;
  - b) no creditor will be prejudiced if the extension is granted;
  - c) it will allow the Company time to develop a suitable SISP; and
  - d) as of the date of this First Report, neither the Company nor the Monitor is aware of any party opposed to an extension.

IX. **ACTIVITIES OF THE COMPANY AND THE MONITOR**

*Overview of Activities since the date of the Initial Order*

34. Since the date of the Initial Order, the Company has among other things:
- a) communicated with the Monitor and the Company's counsel on various matters in connection with the CCAA proceedings; and
  - b) worked with the Monitor to prepare the Updated Cash Flow Projection
35. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:
- a) establishing and maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
  - b) preparing statutory notices and filing same with the Office of the Superintendent of Bankruptcy;
  - c) preparing and mailing the Notice to Creditors of the CCAA proceeding;
  - d) publishing the Notice to Creditors in The Globe and Mail newspaper national edition;
  - e) assisting the Company with preparing the Updated Cash Flow Projection;
  - f) meeting and corresponding with the Company and its legal counsel regarding the development of a SISF and various other matters in connection with the Company's business and its CCAA proceedings;

- g) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings;
- h) responding to calls and enquiries from parties with a potential interest in acquiring the assets of the Company; and
- i) reviewing materials filed with the Court by the Company in respect of the CCAA proceedings and this Motion with respect to the requested stay extension.

x. **CONCLUSION AND RECOMMENDATIONS**

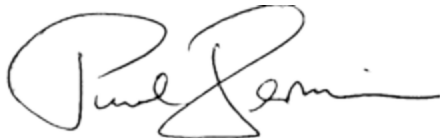
36. Based upon the foregoing, the Monitor respectively recommends that this Court issue an order for the relief being sought by the Company, including but not limited to the extension of the Stay Period up to and including June 9, 2023.

Dated at Toronto, this 9<sup>th</sup> day of May 2023.

**msi Spergel inc.**

solely in its capacity as the CCAA Monitor  
of Plant-Based Investment Corp., and not in its  
personal or corporate capacities

Per:



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Philip H. Gennis, JD., CIRP., LIT

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

**AMENDED AND RESTATED INITIAL ORDER**

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

**ON READING** the affidavit of Paul Crath sworn April 28, 2023 (the "**First Crath Affidavit**"), the affidavit of Paul Crath sworn May 8, 2023 (the "**Second Crath Affidavit**"), and the Exhibits thereto, 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 (3<sup>rd</sup>) business day following the date of forwarding thereof, if sent by ordinary mail.

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

## **GENERAL**

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

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

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

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

  
\_\_\_\_\_  
Justice Conway



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

Court File No CV-23-00698826-00CL

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED  
INITIAL ORDER**

**MILLER THOMSON LLP**

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**Larry Ellis LSO# 49313K**

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Lawyers for the Applicant

May 30, 2023

**SENT BY EMAIL**

MSI SPERGEL INC.  
200 Yorkland Blvd., Suite 1100  
Toronto, Ontario  
M2J 5C1

**Attention: Mukul Manchanda and Philip Gennis**

Dear Mr. Manchanda and Mr. Gennis;

**RE: The Sale and Investment Solicitation Process of Plant-Based Investment Corp.  
("PBIC")**

We are counsel to an ad hoc group of creditors and equity holders including, amongst others, Tarra Private Equity Inc. and Hedgerow Capital Corporation ("**Hedgerow**") in the above-noted matter (the "**Ad Hoc Group**"). The Ad Hoc Group comprises approximately 25 percent of the equity of PBIC.

The Ad Hoc Group has serious concerns about PBIC and its conduct to date. In particular, the Ad Hoc Group is of the view that PBIC's board inappropriately filed the company for protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") when PBIC had access to liquidity and given that, prior to management obtaining shares in connection with the Grown Rogue Transaction (as defined below), PBIC was likely solvent. We understand that PBIC has a motion scheduled for June 9, 2023 seeking to dispose of non-material assets and to approve a sale and investor solicitation process (the "**Sale Process**"). Given these concerns and the concerns outlined below, the Ad Hoc Group is of the view that no Sale Process should be undertaken at this time. Rather, an investigation should take place concerning the Grown Rogue Transaction. Additionally, the Ad Hoc Group is in the process of formulating a plan of arrangement which will see the portfolio of PBIC monetized over time for the benefit of all stakeholders.

**PBIC's Board Inappropriately Filed for CCAA Protection**

The Ad Hoc Group takes the position that PBIC inappropriately filed for CCAA protection. PBIC had access to sufficient funds to avoid a CCAA filing and to continue as a going-concern. In particular, as noted in the Application Record of PBIC, PBIC was offered a \$500,000 loan in March 2023 that PBIC refused to accept. This loan would have provided PBIC sufficient capital to fulfill the necessary requirements to lift the Cease Trade Order and continue operating.

# RECON

R E C O N S T R U C T L L P

The decision of the board of directors to refuse the March 2023 loan was a value destructive action for PBIC, including its equity holders. If the board of PBIC complied with their fiduciary obligation to act in the best interests of PBIC, these CCAA proceedings would not have been commenced.

## **The Management Agreement**

PBIC and CGOC Management Corp. (the “**Manager**”) entered into a management contract (“**Management Contract**”) wherein the Manager provided management services to PBIC including making all decisions regarding PBIC’s business. Notwithstanding the Management Contract, PBIC had an internal CEO, CFO and Chief Strategy Officer who were also responsible for making decisions regarding PBIC’s business. The appropriateness of the Management Contract, including any payments made on account of the Management Contract, is highly questionable given that there are internal officers paid to perform the same services as the Manager and an investment manager overseeing the Passive Public Portfolio. Further, as illustrated below, the Manager is also directly or indirectly owned in part by officers and directors of PBIC, as well as certain board members of PBIC, resulting in a clear conflict of interest.

## **Grown Rogue Transaction**

Notwithstanding the inappropriate nature of the Management Contract, on May 12, 2022, PBIC acquired the Manager through a share purchase agreement whereby it agreed to acquire all of the common shares of the Manager for a purchase price of \$1.4 million, which was satisfied through a transfer and assignment by PBIC of 31,650,000 common shares of Grown Rogue International Inc. to the owners of the Manager (the “**Grown Rogue Transaction**”). The Ad Hoc Group has significant concerns with the Grown Rogue Transaction for various reasons including:

- There does not appear to be any rationale basis for PBIC to acquire its Manager or for PBIC to transfer its most significant asset to acquire the Manager;
- The buyout of the Management Contract is nonsensical given its limited value and the limited amount owing to the Manager thereunder. Under the Management Contract, the Manager only ever earned a Management Fee of 1% of the market capitalization of PBIC. That amount is minimal.
- The buyout of the Management Contract is unnecessary given the officers/directors of PBIC were performing the same duties.

# RECON

R E C O N S T R U C T L L P

- PBIC recorded the total consideration of the transaction as \$2,215,500 “based on the fair value, as represented by the market share price, of the Grown Rogue common shares on May 12, 2022” despite this, the purchase price for the shares was only \$1.4 million.
- The transfer of 31,650,000 Grown Rogue shares for a purchase price of \$1.4 million indicates a price per share of 4.42 cents per share. Today, the Grown Rogue shares are worth 14 cents per share. The difference in price per share results in the former owners of the Manager (being current officers and directors or other insiders of PBIC) benefiting from a gain in the value of the shares totalling \$3,031,000 in approximately 1 year.
- The parties involved in the Grown Rogue Transaction raise issues of transfers at undervalue and conflicts of interest:
  - Paul Crath, the CEO, Vice President Corporate Development and General Counsel of PBIC, was the Director of the Manager (the party purchased by PBIC and receiving the Grown Rogue shares);
  - Graham Simmonds, one of three board members of PBIC, was the Director, President and Secretary of the Manager (the party purchased by PBIC and receiving the Grown Rogue shares);
  - Paul Anderson, a partner of Forbes Anderson (the auditor of PBIC), and Jamie Blundell (former CEO of PBIC) jointly own a company that held a 50% interest in the Manager;
  - Mike Johnston, the CFO of PBIC, is a partner in Forbes Anderson (the auditor of PBIC), as well as one of three board members of PBIC; and
  - Sean Conacher, the former Chief Strategy Officer of PBIC and board member of Grown Rogue and PBIC, co-owns 50% of the Manager (the party having been purchased by PBIC and receiving the Grown Rogue shares).
- PBIC disposed of the shares of Grown Rogue, likely its most valuable asset, without seeking or receiving shareholder approval. The Management Contract requires shareholder approval to increase the management fee payable to the Manager.

Based on the above, the Ad Hoc Group believes that there are sufficient “red flags” surrounding the Grown Rogue Transaction to warrant further investigation by the Monitor to determine whether the Grown Rogue shares were transferred in accordance with applicable law and whether the transfer constituted a transfer at undervalue such that the transaction should be unwound. The Ad Hoc Group will also seek a preservation order against the holders of the Manager at the next hearing in order to prevent them from disposing of the Grown Rogue shares.

# RECON

R E C O N S T R U C T L L P

## **No Sale Process Should be Conducted**

The Ad Hoc Group takes the position that no Sale Process or sale of “non-material” assets should occur at this time, especially pending an investigation by the Monitor into the Grown Rogue Transaction. Selling pieces of PBIC’s investment portfolio at inopportune times and at a discount will erode value to the detriment of all stakeholders. Further, the value of PBIC’s portfolio is not insignificant and if monetized properly, will result in recovery for equity holders.

## **The Hedgerow Transaction**

The Ad Hoc Group strongly opposes the commencement of any Sale Process at this time. However, if a Sale Process ultimately proceeds, the Sale Process must exclude all of the assets sold to Hedgerow in an asset purchase agreement between PBIC and Hedgerow (the “**Hedgerow APA**”).

In and around February 1, 2023, PBIC entered into the Hedgerow APA wherein PBIC agreed to sell some of its investments to Hedgerow for a purchase price of \$200,000 plus the issuance of 9.9% of common shares in Hedgerow. Schedule ‘A’ of the Hedgerow APA lists the assets that PBIC agreed to sell to Hedgerow (the “**Hedgerow Assets**”). The Hedgerow Assets principally consist of investments written down to nil value.

Despite PBIC’s obligations under the Hedgerow APA, PBIC has failed to transfer the Hedgerow Assets to Hedgerow. Hedgerow remains willing and able to complete the transaction and is suffering continuous prejudice by PBIC’s failure to comply with its obligations in the Hedgerow APA. Accordingly, the Ad Hoc Group objects to PBIC disposing of any of the Hedgerow Assets through a Sale Process, “non-material” asset transfer, or otherwise.

## **Conclusion**

The Ad Hoc Group does not believe that a Sale Process should be conducted at this time. The Hedgerow APA and Grown Rogue Transaction raise serious concerns with PBIC’s management of its assets in the reviewable period prior to filing for protection under the CCAA. The Monitor should be provided sufficient time to investigate these transactions, in order to assess the assets of the company and provide the Court and other stakeholders with critical information to meaningfully consider the appropriate next step in the CCAA proceeding.

# RECON

R E C O N S T R U C T L L P

As mentioned above, the Ad Hoc Group is working to put forward a plan of arrangement that they believe will maximize the value of PBIC's assets without incurring the significant time and cost of a Sale Process, to the detriment of all stakeholders.

Yours truly,

**RECONSTRUCT LLP**



Caitlin Fell

CF/jw

cc. Clifton Prophet, [clifton.prophet@gowlingwlg.com](mailto:clifton.prophet@gowlingwlg.com)

Heather Fisher, [heather.fisher@gowlingwlg.com](mailto:heather.fisher@gowlingwlg.com)

Miller Thomson LLP, Counsel to PBIC, [lellis@millertomson.com](mailto:lellis@millertomson.com),

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June 1, 2023

**Patrick Corney**  
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**PRIVATE AND CONFIDENTIAL**  
**VIA EMAIL: CFELL@RECONLLP.COM**

Reconstruct LLP  
Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305  
Toronto, ON M5J 2J3

Attention: Caitlin Fell

Dear Ms. Fell:

**Re: The Sale and Investment Solicitation Process of Plant-Based Investment Corp.  
("PBIC")**

We write further to our call of today's date, and your letter to the Monitor dated May 30, 2023.

PBIC's intention is to move forward with SISP approval on June 8, 2023.

As discussed, we are hopeful that a businessperson to businessperson call or meeting can resolve your clients' concerns with a SISP. We look forward to receiving potential dates and time for that call or meeting. Until then, PBIC reserves its rights on a full response to your letter, which we will respond to if necessary.

Yours truly,

MILLER THOMSON LLP

Per:

Patrick Corney  
PC/dm

c. Larry Ellis, Miller Thomson LLP  
Jessica Wuthmann, Reconstruct LLP

70314853.1

## 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:

<b>Milestone</b>	<b>Deadline</b>
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](mailto:mmanchanda@spergel.ca)  
[pgennis@spergel.ca](mailto:pgennis@spergel.ca)

**In the Matter of a Plan of Compromise or Arrangement of Plant-Based Investment Corp. ("PBIC")**

Cash Flow Statement (in CAD dollars)

For the week beginning June 5, 2023 to and including the week beginning August 28, 2023

(CAD) Week Ending	Week 1 05-Jun	Week 2 12-Jun	Week 3 19-Jun	Week 4 26-Jun	Week 5 03-Jul	Week 6 10-Jul	Week 7 17-Jul	Week 8 24-Jul	Week 9 31-Jul	Week 10 07-Aug	Week 11 14-Aug	Week 12 21-Aug	Total
<b>Investment Receipts</b>													
Expected Proceeds from Sales of Investments	\$ -	23,429	9,000	-	20,000	20,000	20,000	20,000	20,000	-	-	-	\$ 132,429
<b>Total Investment Receipts</b>	-	23,429	9,000	-	20,000	20,000	20,000	20,000	20,000	-	-	-	<b>132,429</b>
<b>Operating Disbursements</b>													
Miller Thompson LLP	210,000	-	-	-	-	-	-	-	-	-	-	-	<b>210,000</b>
msi Spergel Inc.	264,000	-	-	-	-	-	-	-	-	-	-	-	<b>264,000</b>
Paul Crath (CEO)	5,000	-	5,000	-	5,000	-	5,000	-	5,000	-	5,000	-	<b>30,000</b>
Graham Simmonds (Chairman)	5,000	-	5,000	-	5,000	-	5,000	-	5,000	-	5,000	-	<b>30,000</b>
Accounting Services (Consultant)	5,650	-	5,650	-	5,650	-	5,650	-	5,650	-	5,650	-	<b>33,900</b>
Financial Analyst (Consultant)	5,650	-	5,650	-	5,650	-	5,650	-	5,650	-	5,650	-	<b>33,900</b>
Real Estate Advisor (Consultant)	5,650	-	-	-	5,650	-	-	-	-	-	-	-	<b>11,300</b>
Travel Expenses Allowance	2,500	-	2,500	-	2,500	-	-	-	-	-	-	-	<b>7,500</b>
<b>Investment Disbursements</b>													
209820 Highway 26 Lease (Blue Mountains, ON, CA)	-	-	-	-	-	-	-	-	-	-	-	-	-
13095223 Canada Corp. d/b/a Cali-Brands LOC Advance	-	-	-	-	-	-	-	-	-	-	-	-	-
Bhang Inc. LOC Advance	50,000	-	-	-	-	-	-	-	-	-	-	-	<b>50,000</b>
<b>Total Disbursements</b>	<b>553,450</b>	<b>-</b>	<b>23,800</b>	<b>-</b>	<b>29,450</b>	<b>-</b>	<b>21,300</b>	<b>-</b>	<b>21,300</b>	<b>-</b>	<b>21,300</b>	<b>-</b>	<b>670,600</b>
<b>Net Change in Cash from Operations</b>	<b>(553,450)</b>	<b>23,429</b>	<b>(14,800)</b>	<b>-</b>	<b>(9,450)</b>	<b>20,000</b>	<b>(1,300)</b>	<b>20,000</b>	<b>(1,300)</b>	<b>-</b>	<b>(21,300)</b>	<b>-</b>	<b>(538,171)</b>
<b>Net Change in Cash</b>	<b>(553,450)</b>	<b>23,429</b>	<b>(14,800)</b>	<b>-</b>	<b>(9,450)</b>	<b>20,000</b>	<b>(1,300)</b>	<b>20,000</b>	<b>(1,300)</b>	<b>-</b>	<b>(21,300)</b>	<b>-</b>	<b>(538,171)</b>
<b>Opening Cash</b>	<b>116,838</b>	<b>63,388</b>	<b>86,817</b>	<b>72,017</b>	<b>72,017</b>	<b>62,567</b>	<b>82,567</b>	<b>81,267</b>	<b>101,267</b>	<b>99,967</b>	<b>99,967</b>	<b>78,667</b>	<b>116,838</b>
<b>DIP Financing</b>	<b>500,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>500,000</b>
<b>Ending Cash</b>	<b>\$ 63,388</b>	<b>\$ 86,817</b>	<b>\$ 72,017</b>	<b>\$ 72,017</b>	<b>\$ 62,567</b>	<b>\$ 82,567</b>	<b>\$ 81,267</b>	<b>\$ 101,267</b>	<b>\$ 99,967</b>	<b>\$ 99,967</b>	<b>\$ 78,667</b>	<b>\$ 78,667</b>	<b>\$ 78,667</b>

Dated 6th day of June, 2023

**PLANT-BASED INVESTMENT CORP.**

Per:



Name: Paul Crath

Title: Chief Executive Officer

Report on Cash-Flow Statement by the Insolvent Company  
(Paragraph 10(2) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, C. C-36, AS AMENDED  
(the "**CCAA**")

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

The management of Plant-Based Investment Corp. (the "**Company**" or "**PBIC**") has developed the assumptions and prepared the attached statement of projected cash flow as of the 5th day of June, 2023 consisting of statement of Projected Cash Flow for the period from June 5, 2023 to August 25, 2023 (the "**Cash Flow**").

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of New York in the State of New York, this 6<sup>th</sup> day of June 2023.

**Plant-Based Investment Corp.**

Per:



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Paul Crath, CEO

Report on Cash-Flow Statement by the Insolvent Company  
(Paragraph 10(2) of the CCAA)

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.

**Purpose**

1. The Purpose of the projection is to present the Cash Flow of the Company in accordance with the requirements of Section 10(2)(b) of the CCAA.

**Projections Notes**

2. The Cash Flow should be read in conjunction with the Monitor's Report on the Cash Flow Statement and the assumptions below.


**Assumptions**

3. The main purpose of the Cash Flow is to provide the stakeholders with information with respect to the cash requirements of the Company until a sale and investment solicitation program can be finalized. It is anticipated that the Company will require additional DIP financing of \$500,000 to fund the cash flow requirements of the Company during the stay extension sought by the Company.
4. The Company is forecasting to make the following material disbursement with respect to one of its investments:
  - a) \$50,000 with respect to an advance under a line of credit to Bhang Inc. Bhang Inc. is the largest portfolio company of PBIC. PBIC has invested approximately \$6.5 million in Bhang Inc. through equity subscription, share-swaps, debt conversions and debt settlements. Bhang is a public company currently under a cease trade order ("CTO") effective May 5, 2023, due to unpaid audit fees. The advance is required to fund certain critical expenses of Bhang Inc. including audit fees and certain loan settlements so the CTO can be lifted.

Dated at the City of New York in the Province/State of New York, this 6<sup>th</sup> day of June 2023.

**Plant-Based Investment Corp.**

Per:

  
\_\_\_\_\_

Paul Crath, CEO

**In the Matter of a Plan of Compromise or Arrangement of Plant-Based Investment Corp. ("PBIC")**

Variance Analysis (in CAD dollars)

For the period from May 9, 2023 to June XX, 2023

<b>(CAD)</b>	<b>Notes</b>	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
<b>Investment Receipts</b>				
Expected Proceeds from Sales of Investments		\$ -	\$ -	\$ -
<b>Total Investment Receipts</b>		-	-	-
<b>Operating Disbursements</b>				
Paul Crath (CEO)		5,000	5,000	-
Graham Simmonds (Chairman)		5,000	5,000	-
Accounting Services (Consultant)		10,500	11,300	800
Financial Analyst (Consultant)		5,650	5,650	-
Real Estate Advisor (Consultant)		-	5,650	5,650
<b>Investment Disbursements</b>				
209820 Highway 26 Lease (Blue Mountains, ON, CA)		6,000	6,000	-
483 Driggs Avenue Lease (Brooklyn, NY, USA) [USD \$24,000]		-	33,000	33,000
13095223 Canada Corp. d/b/a Cali-Brands LOC Advance		-	15,000	15,000
Bhang Inc. LOC Advance		75,000	75,000	-
Erthecode Inc. Loan Advance [USD \$30,000]		40,311	40,500	189
New York JV Loan Advance [USD \$37,000]		-	50,000	50,000
Bodie Phytoceuticals Ltd. Loan Advance		75,000	75,000	-
<b>Total Disbursements</b>		<b>222,461</b>	<b>327,100</b>	<b>104,639</b>
<b>Net Change in Cash from Operations</b>		<b>(222,461)</b>	<b>(327,100)</b>	<b>(104,639)</b>
<b>Net Change in Cash</b>		<b>(222,461)</b>	<b>(327,100)</b>	<b>(104,639)</b>
<b>Opening Cash</b>		<b>39,299</b>	<b>39,299</b>	<b>-</b>
<b>DIP Financing Draw (Payback)</b>		<b>300,000</b>	<b>300,000</b>	<b>-</b>
<b>Ending Cash</b>		<b>\$ 116,838</b>	<b>\$ 12,199</b>	<b>\$ (104,639)</b>

Report on Cash-Flow Statement by the Monitor  
(Paragraph 23(1)(b) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, C. C-36, AS AMENDED  
(the "**CCAA**")

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

The attached statement of projected cash flows of Plant-Based Investment Corp. (the "**Company**" or "**PBIC**") as of the 5<sup>th</sup> day of June 2023, consisting of statement of Projected Cash Flow for the period from June 5, 2023 to August 25, 2023 (the "**Cash Flow**") has been prepared by the management of the Company for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the Company. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respect,

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurances as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report or relied upon in preparing this report.

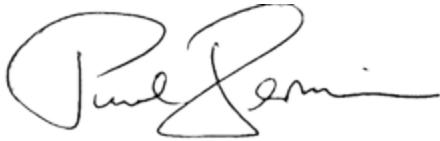
The Cash Flow has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 6<sup>th</sup> day of June 2023.

**msi Spergel inc**

solely in its capacity as the CCAA Monitor  
of Plant-Based Investment Corp. and not in  
its personal or corporate capacity.

Per:

A handwritten signature in black ink, appearing to read "Philip H. Gennis". The signature is written in a cursive style with a large initial "P" and "G".

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Philip H. Gennis, JD., CIRP, LIT



Report on Cash-Flow Statement by the Monitor  
(Paragraph 23(1)(b) of the CCAA)

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.

**Purpose**

1. The Purpose of the projection is to present the Cash Flow of the Company in accordance with the requirements of Section 10(2)(b) of the CCAA.

**Projections Notes**

2. The Cash Flow should be read in conjunction with the Monitor's Report on the Cash Flow Statement and the assumptions below.

**Assumptions**

3. The main purpose of the Cash Flow is to provide the stakeholders with information with respect to the cash requirements of the Company until a sale and investment solicitation program can be finalized. It is anticipated that the Company will require additional DIP financing of \$500,000 to fund the cash flow requirements of the Company during the stay extension sought by the Company.
4. The Company is forecasting to make the following material disbursements with respect to one of its investments:
  - a. \$50,000 with respect to an advance under a line of credit to Bhang Inc. Bhang Inc. is the largest portfolio company of PBIC. PBIC has invested approximately \$6.5 million in Bhang Inc. through equity subscription, share-swaps, debt conversions and debt settlements. Bhang is a public company currently under a cease trade order ("**CTO**") effective May 5, 2023, due to unpaid audit fees. The advance is required to fund certain critical expenses

of Bhang Inc. including audit fees and certain loan settlements so the CTO can be lifted.

Dated at the City of Toronto in the Province of Ontario, this 6<sup>th</sup> day of June 2023.

**msi Spergel inc**

solely in its capacity as the CCAA Monitor  
of Plant-Based Investment Corp. and not in  
its personal or corporate capacity.

A handwritten signature in black ink, appearing to read "Philip H. Gennis". The signature is fluid and cursive, with a large initial "P" and "H".

Per \_\_\_\_\_  
Philip H. Gennis, JD., CIRP, LIT