

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 21 <sup>ST</sup>
JUSTICE CAVANAGH	)	DAY OF MARCH, 2024

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  
PHOENA HOLDINGS INC., PHOENA INC., ELMCLIFFE INVESTMENTS INC.,  
ELMCLIFFE INVESTMENTS [NO. 2] INC., AND CTI HOLDINGS (OSOYOOS) INC.  
(collectively, the "**Applicants**")

**ORDER  
(APPROVAL AND REVERSE VESTING ORDER)**

**THIS MOTION** made by the Applicants, Phoena Holdings Inc. (the "**Company**"), Phoena Inc. ("**Phoena**"), Elmcliffe Investments Inc. ("**Elmcliffe**"), Elmcliffe Investments [No. 2] Inc. ("**Elmcliffe 2**") and CTI Holdings (Osoyoos) Inc. ("**CTI**" and together with the Company, Phoena, Elmcliffe and Elmcliffe 2, collectively, the "**Applicants**" or the "**Purchased Entities**"), for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*, (i) approving the Amended and Restated Subscription Agreement ("**Subscription Agreement**") among the Company and T'IITSK'IN Spirit Ventures Ltd. as assigned to 1000832157 Ontario Ltd. (the "**Purchaser**") dated March 14, 2024 and attached as Exhibit "C" to the affidavit of Darren Karasiuk sworn March 14, 2024 (the "**Karasiuk Affidavit**") for the purchase and sale of all of the issued and outstanding shares of the Company (the "**Purchased Shares**") and the Transaction (as defined therein); (ii) adding 15861217 Canada Inc.

(“**ResidualCo 1**”) and 15861225 Canada Inc. (“**ResidualCo 2**”) as Applicants to these CCAA Proceedings; (iii) vesting in the Purchaser all of the Company’s right, title and interest in and to the Purchased Shares, free and clear from any Encumbrances; (iv) vesting absolutely and exclusively in ResidualCo 1 the Excluded Tax Assets and any and all of the Purchased Entities’ rights to the funds being held in the D&O Trust; (v) vesting the security interests granted by the Purchased Entities to Cortland Credit Lending Corporation in the property, assets and undertaking of ResidualCo 1 and ResidualCo. 2; (vi) vesting absolutely and exclusively in ResidualCo 2, the remaining Excluded Assets and Excluded Liabilities; (vii) discharging all Encumbrances against the Purchased Entities and the Retained Assets other than the Permitted Encumbrances; (viii) approving releases in favour of (1) the directors, officers, legal counsel and advisors of the Applicants, ResidualCo 1 and ResidualCo 2 that were directors, officers, legal counsel and advisors of the Applicants as at date of the commencement of the CCAA Proceedings or the date of incorporation in the case of ResidualCo 1 and ResidualCo 2, and (2) the Monitor and its legal counsel; (ix) expanding the Monitor’s powers regarding ResidualCo 1 and ResidualCo 2; (x) terminating the Directors’ Charge and the KERP Charge and reducing the Administration Charge (each as defined in the Initial Order); (xi) discharging and releasing Ernst & Young Inc. (“**EY**”) as receiver (in such capacity, the “**Receiver**”) over the real property owned by Elmclyffe municipally known as 1396 Balfour Street, Pelham, ON (the “**Facility**”); (xii) discharging and releasing Darren Karasiuk as Chief Restructuring Advisor (“**CRA**”) in these CCAA Proceedings; (xiii) sealing Confidential Appendix “1” to the Fifth Report of Ernst & Young Inc., in its capacity as Monitor of the Applicants (the “**Monitor**”) dated March 18, 2024 (the “**Fifth Report**”); and (xiii) granting certain related relief, was heard this day via Zoom videoconference.

**ON READING** the Motion Record of the Applicants dated March 14, 2024 and the Fifth Report and on hearing the submissions of counsel for the Applicants, the Monitor, the DIP Lender, and those other parties appearing as indicated by the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Kim Sellers sworn March 15, 2024,

## **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.

## **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the Subscription Agreement, the Karasiuk Affidavit or the Fifth Report.

## **APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that the Subscription Agreement and the Transaction are hereby approved and the execution of the Subscription Agreement (including the Implementation Steps) by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary including as contemplated in the Subscription Agreement, with the approval of the Monitor. The Company is hereby authorized and directed to perform its obligations under the Subscription Agreement, including the filing of the Articles of Reorganization, the issuance of the Purchased Shares and the termination and

cancellation of the Existing Shares, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction including, without limitation, the Implementation Steps.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Company to proceed with the Transaction including, without limitation, the Implementation Steps, and that no shareholder or other approval shall be required in connection therewith. For greater certainty, the Company is hereby permitted to execute and file the Articles of Reorganization or any other documents or instruments as may be required to permit or enable and effect the Transaction, and the Articles of Reorganization or any such other documents or instruments shall be deemed to be duly authorized, valid and effective notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law.

5. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser, substantially in the form attached as **Schedule "A"** hereto, the following steps shall occur and shall be deemed to have occurred in the sequence as set out in the Implementation Steps and as set out below, provided that the Implementation Steps as set out below may be amended to implement the Transaction on such terms as may be agreed by the Parties, with the consent of the Monitor or further Order of the

- (a) all of the Purchased Entities' right, title and interest in and to their respective Excluded Tax Assets shall transfer to, and vest absolutely and exclusively in, ResidualCo 1;

- (b) all of the Purchased Entities' right, title and interest in and to the funds being held in the D&O Trust shall transfer to, and vest absolutely and exclusively in, ResidualCo 1;
- (c) all of the remaining Excluded Assets shall transfer to, and vest absolutely and exclusively in, ResidualCo 2 and, in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer;
- (d) all of the Excluded Liabilities (which, for greater certainty, includes all debts, obligations, Liabilities, Encumbrances, indebtedness, Excluded Contracts, leases, agreements, undertakings, Claims, rights and entitlements of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or in equity and whether based in statute or otherwise) of or against the Purchased Entities, the Purchased Shares, or against, relating to or affecting any of the Retained Assets, including the Facility, shall transfer to, be assumed by and vest absolutely and exclusively in ResidualCo 2 with the same nature and priority as they had immediately prior to their transfer, such that all Excluded Contracts and Excluded Liabilities shall become obligations of ResidualCo 2 and shall no longer be obligations of any of the Purchased Entities, and the Purchased Entities and the Retained Assets, including the Facility, shall be and are hereby forever released and discharged from Excluded Liabilities, and all related Claims and Encumbrances, other than the Permitted Encumbrances, are

hereby expunged and discharged as against the Purchased Entities and the Retained Assets including, without limitation, the Facility;

- (e) in addition to and notwithstanding subparagraph 5(d), all of the Claims and Encumbrances granted by the Purchased Entities to Cortland Credit Lending Corporation shall also be transferred to, assumed by and vest absolutely in, the property, assets and undertaking of ResidualCo 1 with the same nature and priority as they had immediately prior to their transfer;
- (f) all right, title and interest in and to the Purchased Shares issued by the Company to the Purchaser shall vest absolutely and exclusively in the Purchaser free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares;
- (g) all of the Existing Shares (which, for greater certainty, do not include the Purchased Shares) shall be deemed terminated and cancelled for no consideration as provided for in the Implementation Steps and the Articles of Reorganization, as applicable;
- (h) the Company shall transfer the ResidualCo Shares to the Monitor; and
- (i) the Purchased Entities shall and shall be deemed to cease to be Applicants in these CCAA Proceedings, shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA

Proceedings, save and except for this Order, the provisions of which (as they relate to the Purchased Entities) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara South (No. 59) of an Application to Amend Based on Court Order in the form prescribed by the *Land Titles Act* (Ontario) and/or the *Land Registration Reform Act* (Ontario), the Land Registrar is hereby directed to delete and expunge from title to the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) all of the Claims listed in **Schedule “C”** hereto, which for greater certainty shall not include the Permitted Encumbrances listed in **Schedule “D”**.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof in connection with the Transaction.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicants and the Purchaser regarding the fulfillment of conditions to closing under the Subscription Agreement and shall have no liability with respect to delivery of the Monitor’s Certificate.

9. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares, (the “**Proceeds**”) shall be allocated to ResidualCo 1 and ResidualCo 2, and that from and after the delivery of the Monitor’s Certificate, all Claims and Encumbrances shall attach to the Proceeds, with the same priority as they had with respect to the Purchased Shares, and the Retained Assets immediately prior to the sale, as if (i) the Purchased Shares and Retained Assets had not been sold and remained owned by and in the possession or control of the Person who owned and had possession or control immediately prior to the sale; and (ii) the Excluded Contracts and Excluded Liabilities had not been transferred to

and vested in ResidualCo 2 and had remained liabilities of the Purchased Entities immediately prior to the transfer.

10. **THIS COURT ORDERS** that, upon delivery of the Monitor's Certificate, the Purchaser, its counsel, and/or their respective agents, shall be authorized to file or register, as applicable, all such financing change statements and other instruments as may be necessary to cancel and discharge all registrations against the Purchased Entities pursuant to the *Personal Property Security Act* (Ontario), *Personal Property Security Act* (British Columbia) or any similar legislation.

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants or the Monitor, as the case may be, is authorized and permitted to disclose to the Purchaser all human resources and payroll information in the relevant Purchased Entities' records pertaining to past and current employees of the Company. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the relevant Purchased Entity.

12. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and the Purchased Entities shall be deemed released from any and all Claims and Encumbrances with respect to or arising from any Taxes (including penalties and interest thereon) of, or that relate to, the Applicants or the Retained Assets, including without limiting the generality of the foregoing all Taxes that could be assessed against the Purchaser or the Purchased Entities (including their affiliates and any predecessor



corporations) pursuant to section 160 of the *Income Tax Act* (Canada) (the “**Tax Act**”) or section 160.01 of the Tax Act, and including as a result of any future amendments or proposed amendments to such provisions or related provisions, or any provincial equivalent (provided, as it relates to the Purchased Entities, such release shall not apply to (i) Taxes arising from the Transaction, (ii) Taxes in respect of the business and operations conducted by the Purchased Entities after the Closing Time) or (iii) that otherwise expressly form a part of the Assumed Liabilities. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to ResidualCo 2.

13. **THIS COURT ORDERS** that except to the extent expressly contemplated by the Subscription Agreement, all Assumed Contracts as at the delivery of the Monitor’s Certificate will be and remain in full force and effect upon and following delivery of the Monitor’s Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the delivery of the Monitor’s Certificate that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);
- (b) the insolvency of any Applicant or the fact that the Applicants sought or obtained relief under the CCAA or the fact that a receiver was appointed over the Facility

pursuant to the Order of Mr. Justice Cavanagh dated August 11, 2023 (the “Receivership Order”);

- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Subscription Agreement, the Transaction or the provisions of this Order, or any other Order of the Court in these CCAA Proceedings; or
- (d) any direct or indirect change of control of any of the Purchased Entities, or other step arising from the implementation of the Subscription Agreement, the Transaction, the Implementation Steps or the provisions of this Order; and
- (e) any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under an Assumed Contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Company from performing their obligations under the Subscription Agreement or be a waiver of defaults by the Purchaser or the Company under the Subscription Agreement and the related documents.

14. **THIS COURT ORDERS**, for greater certainty, that: (a) nothing in paragraph 13 hereof shall waive, compromise or discharge any obligations of the Purchased Entities in respect of any Assumed Liabilities, and (b) the designation of any Claim as an Assumed Liability is without prejudice to the Purchased Entities’ right to dispute the existence, validity or quantum of any such Assumed Liabilities, and (c) nothing in this Order or the Subscription Agreement shall affect or waive the Purchased Entities’ rights and defences, both legal and equitable, with respect to any of

the Assumed Liabilities, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liabilities.

15. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any Applicant then existing or previously committed by any Applicant, or caused by any Applicant, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Assumed Contract, existing between such Person and the Purchased Entities arising directly or indirectly from the filing by the Applicants under the CCAA, the granting of the Receivership Order and the implementation of the Transaction, including without limitation any of the matters or events listed in paragraph 13 hereof.

16. **THIS COURT ORDERS** that from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Purchased Entities or the Retained Assets relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order.

17. **THIS COURT ORDERS** that, from and after the Closing Time:

- (a) the nature of the Assumed Liabilities assumed by the Purchaser or retained by the Purchased Entities, including, without limitation, their amount and their secured or

unsecured status, shall not be affected or altered as a result of the Transaction or this Order;

- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo 2;
- (c) any Person that prior to the Closing Time had a valid right or claim against the Purchased Entities under or in respect of any of the Excluded Contracts or the Excluded Liabilities (each an “Excluded Liability Claim”) shall no longer have such right or claim against the Company but will have an equivalent Excluded Liability Claim against ResidualCo 2 in respect of the Excluded Contracts and Excluded Liabilities from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo 2; and
- (d) the Excluded Liability Claim of any Person against ResidualCo 2 following the Closing Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the Company prior to the Closing Time.

18. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

- (a) ResidualCo 1 and ResidualCo 2 shall be companies to which the CCAA applies;  
and
- (b) ResidualCo 1 and ResidualCo 2 shall be added as Applicants in these CCAA Proceedings and all references in any Order of this Court in respect of these CCAA

Proceedings to (i) an “Applicant” or the “Applicants” shall refer to and include ResidualCo 1 and ResidualCo 2, *mutatis mutandis*, and (ii) the “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof, of ResidualCo 1 or ResidualCo 2 (the “ResidualCo Property”), and, for greater certainty, each of the Charges (as defined in the Initial Order) shall constitute a charge on the ResidualCo Property.

19. **THIS COURT ORDERS** that, following the Closing Time, the title of these CCAA Proceedings is hereby changed to:

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  
15861217 CANADA INC. AND 15861225 CANADA INC. (the “Applicants”)

20. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the Subscription Agreement, the implementation of the Transaction (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo 1 or ResidualCo 2, as applicable, any payments by the Purchaser authorized herein or pursuant to the Subscription Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants, ResidualCo 1 and/or ResidualCo 2 and shall not be void or voidable by creditors of the Applicants, ResidualCo1 or ResidualCo 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

## **RELEASES**

21. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, (A) the directors, officers, legal counsel and advisors of the Applicants, ResidualCo 1 and ResidualCo 2 that were directors, officers, legal counsel and advisors of the Applicants as at date of the commencement of the CCAA Proceedings or the date of incorporation in the case of ResidualCo 1 and ResidualCo 2; and (B) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or

unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate (a) undertaken or completed pursuant to the terms of this Order, (b) arising in connection with or relating to the Subscription Agreement or the completion of the Transaction, (c) arising in connection with or relating to these CCAA Proceedings, or (d) related to the management, operations or administration of the Applicants (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

#### **MONITOR'S ENHANCED POWERS**

22. **THIS COURT ORDERS** that, effective upon the filing of the Monitor's Certificate, in addition to the powers and duties of the Monitor set out in the Initial Order or any other Order of this Court in these CCAA Proceedings, and without altering in any way the limitations and obligations of ResidualCo 1 and ResidualCo 2 as a result of these CCAA Proceedings, the Monitor be and is hereby authorized and empowered, but not required to:

- (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of ResidualCo 1 and/or ResidualCo 2 in order to facilitate the performance of any ongoing obligations of same, including with respect to any Excluded Liability Claim, and to carry out the Monitor's duties under this Order or any other Order of this Court in these CCAA Proceedings;

- (b) exercise any powers which may be properly exercised by a board of directors of ResidualCo 1 and/or ResidualCo 2;
- (c) cause ResidualCo 1 and/or ResidualCo 2 to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;
- (d) open one or more new accounts (the “ResidualCo Accounts”) into which all funds, monies, cheques, instruments and other forms of payment payable to ResidualCo 1 and/or ResidualCo 2 shall be deposited to and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ResidualCo 1 and/or ResidualCo 2, the ResidualCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties;
- (e) cause ResidualCo 1 and/or ResidualCo 2 to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo 1 and/or ResidualCo 2 or the distribution of the proceeds or any other related activities, including in connection with bringing these CCAA Proceedings to an end;
- (f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ResidualCo 1 and/or ResidualCo 2 (including any governmental authority) in the name of or on behalf of ResidualCo 1 and/or ResidualCo 2;



- (g) claim or cause ResidualCo 1 and/or ResidualCo 2 to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which ResidualCo 1 or ResidualCo 2 is entitled;
- (h) have access to all books and records that are the property of ResidualCo 1 and ResidualCo 2 in its possession or control in addition to the Applicants' books and records in accordance with the terms of the Subscription Agreement;
- (i) assign ResidualCo 1 and/or ResidualCo 2, or cause ResidualCo 1 and/or ResidualCo 2 to be assigned, into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (j) consult with Canada Revenue Agency or any other governmental body with respect to any issues arising in respect of these CCAA Proceedings; and
- (k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

## **THE MONITOR**

23. **THIS COURT ORDERS** that nothing in this Order, including the release of the Purchased Entities from the purview of these CCAA Proceedings pursuant to paragraph 5(i) hereto and the addition of ResidualCo 1 and ResidualCo 2 each as an Applicant in these CCAA Proceedings, shall affect, vary, derogate from, limit or amend, and EY shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, this Order and any other Orders in these CCAA Proceedings or otherwise,

including all approvals, protections and stays of proceedings in favour of EY in its capacity as Monitor, all of which are expressly continued and confirmed.

24. **THIS COURT ORDERS** that the Monitor and its directors, officers, employees and representatives shall not be deemed directors of ResidualCo 1 or ResidualCo 2, defector or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or willful misconduct of the Monitor.

25. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (i) be deemed to have taken part in the management or supervision of the management of the Applicants (including ResidualCo 1 and ResidualCo 2), or to have taken or maintained possession or control of the business or property of any of the Applicants (including ResidualCo 1 and ResidualCo 2), or any part thereof; or (ii) be deemed to be in Possession (as defined in the Initial Order) of any property of the Applicants (including ResidualCo 1 and ResidualCo 2) within the meaning of any applicable Environmental Legislation (as defined in the Initial Order) or otherwise.

#### **TERMINATION OF DIRECTORS' CHARGE AND KERP CHARGE**

26. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, the Directors' Charge and the KERP Charge shall be and are hereby terminated.

## **REDUCTION OF THE ADMINISTRATION CHARGE**

27. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Certificate, the amount of the Administration Charge in paragraph 43 of the Amended and Restated Initial Order dated April 4, 2023 be and is hereby reduced from \$400,000 to \$200,000.

## **RECEIVER'S DISCHARGE AND RELEASE**

28. **THIS COURT ORDERS** that, upon the Monitor delivering the Monitor's Certificate to the Purchaser and thereafter filing it with the Court, EY shall be discharged as Receiver of the Facility, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of EY in its capacity as Receiver.

29. **THIS COURT ORDERS AND DECLARES** that, upon the Monitor delivering the Monitor's Certificate to the Purchaser and thereafter filing it with the Court, EY is hereby released and discharged from any and all liability that EY now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of EY while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, EY is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or willful misconduct on the Receiver's part.

## **CRA'S DISCHARGE AND RELEASE**

30. **THIS COURT ORDERS** that, effective at the Closing Time, Darren Karasiuk shall be and is hereby discharged from his duties as the CRA in these CCAA Proceedings and shall have no further duties, obligations or responsibilities as the CRA from and after Closing Time, provided that, notwithstanding his discharge as CRA, the CRA shall have the authority to carry out, complete or address any matters in its role as CRA that are ancillary or incidental to these CCAA Proceedings following the Closing Time, as may be required.

31. **THIS COURT ORDERS** that, notwithstanding any provision of this Order or the CRA's discharge, nothing herein shall affect, vary, derogate from, limit or amend, and the CRA shall continue to have the benefit of, any of the rights, approvals and protections in favour of the CRA pursuant to the Initial Order and any other Order of this Court in these CCAA Proceedings or otherwise, all of which are expressly continued and confirmed following the Closing Time, including in connection with any actions taken by the CRA following the Closing Time with respect to the Applicants or these CCAA Proceedings.

32. **THIS COURT ORDERS AND DECLARES** that, effective at the Closing Time, the CRA is hereby released and discharged from any and all liability that the CRA now has or may hereafter has by reason of, or in any way arising out of, the acts or omissions of the CRA while acting in its capacity as CRA herein, save and except for any gross negligence or wilful misconduct on the CRA's part. Without limiting the generality of the foregoing, the CRA is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these CCAA Proceedings, save and except for any gross negligence or willful misconduct on the CRA's part.

## **SEALING ORDER**

33. **THIS COURT ORDERS** that the Confidential Appendix to the Fifth Report is hereby sealed and shall not form part of the public record until the earlier of (a) closing of the Transaction and (b) further Order of the Court.

## **GENERAL**

34. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares, the Purchased Entities and the Retained Assets.

35. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

36. **THIS COURT DECLARES** that the Applicants shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Applicants, 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 Applicants and the Monitor, as an officer

of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.

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

39. **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, provided that the transaction steps set out in Paragraph 5 shall be deemed to have occurred sequentially, one after the other, in the order set out in Paragraph 5.

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**Schedule “A”  
Form of Monitor’s Certificate**

Court File No. CV-23-00697285-00CL

**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  
PHOENA HOLDINGS INC., PHOENA INC., ELMCLIFFE INVESTMENTS INC.,  
ELMCLIFFE INVESTMENTS [NO. 2] INC., AND CTI HOLDINGS (OSOYOOS) INC.  
(collectively, the “Applicants”)**

**MONITOR’S CERTIFICATE**

**RECITALS**

A. The Applicants commenced these proceedings under the *Companies’ Creditors Arrangement Act* (Canada) on April 4, 2023 (the “**CCAA Proceedings**”).

B. Pursuant to an Order of the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 4, 2023, Ernst & Young Inc. was appointed as monitor (the “**Monitor**”) of the Applicants in the CCAA Proceedings.

C. Pursuant to an Approval and Reverse Vesting Order of the Court dated March 21, 2024 (the “**Order**”), the Court approved the transaction (the “**Transaction**”) contemplated by the Subscription Agreement (the “**Subscription Agreement**”) among Phoena Holdings Inc. (the “**Company**”) and T’IITSK’IN Spirit Ventures Ltd. as assigned to 1000832157 Ontario Inc. (the “**Purchaser**”) dated March 14, 2024 and provided for, *inter alia* (i) 15861217 Canada Inc. (“**ResidualCo 1**”) and 15861225 Canada Inc. (“**ResidualCo 2**”) to be added as Applicants to these

CCAA Proceedings; (ii) vesting in the Purchaser all of the Company's right, title and interest of the Company in and to the Purchased Shares, free and clear from any Encumbrances; (iii) vesting absolutely and exclusively in ResidualCo 1 the Excluded Tax Assets and any and all of the Purchased Entities' rights to the funds being held in the D&O Trust; (iv) vesting the Encumbrances granted by the Purchased Entities to Cortland Credit Lending Corporation in the property, assets and undertaking of ResidualCo 1 and ResidualCo. 2; (v) vesting absolutely and exclusively in ResidualCo 2, the remaining Excluded Assets and Excluded Liabilities; (vi) discharging all Encumbrances against the Purchased Entities and the Retained Assets other than the Permitted Encumbrances; (vii) approving releases in favour of (1) the directors, officers, legal counsel and advisors of the Applicants, ResidualCo 1 and ResidualCo 2 that were directors, officers, legal counsel and advisors of the Applicants as at date of the commencement of the CCAA Proceedings or the date of incorporation in the case of ResidualCo 1 and ResidualCo 2, and (2) the Monitor and its legal counsel; (viii) expanding the Monitor's powers regarding ResidualCo 1 and ResidualCo 2, upon delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Shares; and (ii) that the conditions to Closing as set out in sections 8.2 and 8.3 of the Subscription Agreement have been satisfied or waived;

D. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Subscription Agreement



2. The Monitor has received written confirmation from the Purchaser and the Company, in form and substance satisfactory to the Monitor, that all conditions to closing as set out in sections 8.2 and 8.3 of the Subscription Agreement have been satisfied or waived; and
3. The Transaction has been completed to the satisfaction of the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_, 2024.

**Ernst & Young Inc., in its capacity as  
Monitor of the Applicants, and not in its  
personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule “B”**  
**Real Property**

**LEGAL DESCRIPTION:**

PART OF LOT 14 CONCESSION 8 PELHAM BEING FIRSTLY: PART 1 PLAN 59R8668;  
SECONDLY: PARTS 1 & 2 PLAN 59R4462; THIRDLY: PART 1 PLAN 59R647 SAVE AND  
EXCEPT RO385535; FOURTHLY: AS IN PE16925; FIFTHLY: AS IN RO257496; TOWN OF  
PELHAM

**PIN:**

64030-0908 (LT)

**Schedule “C”**

**Claims to be deleted and expunged from title to Real Property  
Schedule C – Claims to be deleted and expunged from title to Real Property**

**1396 Balfour Street, Pelham, Ontario - PIN: 64030-0908 (LT)**

<b>Registration No.</b>	<b>Registration Date (Y/M/D)</b>	<b>Document Type</b>	<b>Party From</b>	<b>Party To</b>
SN570219	2018/11/01	NOTICE OF LEASE	ELMCLIFFE INVESTMENTS INC.	CANNTRUST INC.
SN717124	2022/03/14	CHARGE	ELMCLIFFE INVESTMENTS INC.	CORTLAND CREDIT LENDING CORPORATION
SN717125	2022/03/14	NOTICE OF ASSIGNMENT OF RENTS GENERAL	ELMCLIFFE INVESTMENTS INC.	CORTLAND CREDIT LENDING CORPORATION
SN717126	2022/03/14	CHARGE	ELMCLIFFE INVESTMENTS INC.	MARSHALL FIELDS INTERNATIONAL B.V.
SN717127	2022/03/14	NOTICE OF ASSIGNMENT OF RENTS GENERAL	ELMCLIFFE INVESTMENTS INC.	MARSHALL FIELDS INTERNATIONAL B.V.

## Schedule D

### Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property (unaffected by the Vesting Order)

**1396 Balfour Street, Pelham, Ontario**

**PIN: 64030-0908 (LT)**

Registration No.	Registration Date (Y/M/D)	Document Type	Party From	Party To
SN502623	2017/03/06	TRANSFER	1970030 ONTARIO INC.	ELMCLIFFE INVESTMENTS INC.
SN569263	2018/10/24	TRANSMISSION BY PERSONAL REP	MCCARTHY, COLLEEN LILY; MCCARTHY, ROSS ALFRED	ELMCLIFFE INVESTMENTS INC.
SN570981	2018/11/06	NOTICE OF SUBLEASE	CANNTRUST INC.	BALFOUR ENERGY CORP.
SN572404	2018/11/19	APPLICATION TO CONSOLIDATE	ELMCLIFFE INVESTMENTS INC.	
SN575620	2018/12/18	NOTICE OF SECURITY INTEREST	CATERPILLAR FINANCIAL SERVICES LIMITED	

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PHOENA HOLDINGS INC., PHOENA INC., ELMCLIFFE  
INVESTMENTS INC., ELMCLIFFE INVESTMENTS [NO. 2] INC., AND CTI  
HOLDINGS (OSOYOOS) INC. (collectively, the “**Applicants**”)

Court File No.: CV-23-00697285-00CL

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

Proceedings commenced at Toronto

**APPROVAL AND REVERSE VESTING  
ORDER  
(Dated March 21, 2024)**

**MILLER THOMSON LLP**

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