

**SUPERIOR COURT
(Commercial Division)**

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-062372-236
Date: September 22, 2023**

PRESIDING: THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.

In the matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended of:

CAPCIUM INC.

GELCAN CORPORATION INC.

Debtors

THE BANK OF NOVA SCOTIA

Applicant

RAYMOND CHABOT INC.

Monitor

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (QUÉBEC)

Mis-en-cause

APPROVAL AND VESTING ORDER

[1] **ON READING** the Monitor's *Application for the Issuance of an Approval and Vesting Order* dated September 21, 2023 (the "**Application**"), the sworn statement and the exhibits in support thereof, as well as the Fourth Report dated September 21, 2023 (**P-5**) (the "**Report**") of Raymond Chabot Inc. (the "**Monitor**"), acting as monitor of Capcium Inc. ("**Capcium**") and Gelcan Corporation Inc. ("**Gelcan**" and collectively with Capcium, the "**Debtors**") pursuant to the Initial Order dated May 17, 2023, as amended from time to time, including on May 26, 2023 (the "**Initial Order**");

- [2] **CONSIDERING** the notification of the Application to the service list;
- [3] **CONSIDERING** the submissions of counsel present at the hearing on the Application and the testimony of the Monitor's representative;
- [4] **CONSIDERING** the Bidding Procedures Order granted by this Court on May 17, 2023, approving, *inter alia*, the conduct of a sale and investment solicitation process (the "**SISP**");
- [5] **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*, RSC 1985, C-36, as amended (the "**CCAA**");
- [6] **GIVEN** that it is appropriate to issue an order approving, *inter alia*:
- a) the purchase and sale and other transactions (the "**Purchase and Sale Transactions**") contemplated in the Investment and Transaction Agreement (the "**Purchase Agreement**") dated as of September 22, 2023, entered into by and between (i) 15382335 Canada Inc. ("**Purchaser 1**") (ii) 15382416 Canada Inc. ("**Purchaser 2**," collectively with Purchaser 1, "**Purchasers**"), as purchasers (iii) the Debtors, and (iii) Raymond Chabot Inc., as Monitor, a copy of said Purchase Agreement was filed under seal in support of the Application as **Exhibit P-1** to the Application;
 - b) the pre-closing reorganization steps contemplated in the Purchase Agreement and listed in paragraph [13] of this Order (collectively referred to as the "**Pre-Closing Reorganization**" and collectively with the Purchase and Sale Transactions, the "**Transactions**").

WHEREFORE, THE COURT:

- [7] **GRANTS** the Application.
- [8] **DECLARES** that, unless otherwise indicated or defined herein, capitalized terms used in this Order (the "**Order**") shall have the meanings ascribed to them in the Purchase Agreement appended as **Schedule "A"** hereto.

NOTIFICATION

- [9] **ORDERS** that any prior delay for the presentation of this Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
- [10] **PERMITS** notification of this Order at any time and place and by any means whatsoever.

PURCHASE AGREEMENT

[11] **ORDERS** and **DECLARES** that the execution of the Purchase Agreement by the Monitor, for and on behalf of the Debtors, as well as the Transactions and the completion of the Transactions are hereby authorized and approved, with such non-material alterations, changes, amendments, deletions, or additions thereto, as may be agreed to by the parties thereto and with the consent of the Monitor.

PRE-CLOSING REORGANIZATION

[12] **AUTHORIZES** and **RATIFIES** *nunc pro tunc* the incorporation by the Monitor of

- (i) a corporation ("**ResidualCo 1**") under the *Business Corporations Act* (Québec), with authorized share capital consisting of a class of voting and fully participating common shares; and
- (ii) a corporation ("**ResidualCo 2**") under the *Business Corporations Act* (Québec), with authorized share capital consisting of a class of voting and fully participating common shares.

[13] **AUTHORIZES** and **ORDERS** the Purchasers, the Debtors, the Monitor as well as ResidualCo 1 and ResidualCo 2 to implement and complete the Pre-Closing Reorganization in accordance with the steps described below and in the Purchase Agreement (the "**Pre-Closing Reorganization Steps**"):

- a) Prior to the Closing Date, the Articles of Reorganization shall be filed to amend the share capital of Capcium in order to:
 - (i) amend the rights, privileges, restrictions and conditions attached to the common shares (the "**Common Shares**"), the Class A preferred shares (the "**Class A Preferred Shares**"), the Class B Preferred Shares (the "**Class B Preferred Shares**"), and together with the Class A Preferred Shares, the "**Preferred Shares**") and any other classes of shares outstanding in the capital of Capcium to add an automatic redemption feature for no consideration which shall be deemed to be effected a moment in time prior to the issuance of the Subscribed Shares (as defined below) in accordance with the Pre-Closing Reorganization Steps (the "**Deemed Redemption**");
 - (ii) create a new class of voting and fully participating common shares, unlimited in number, designated as "Class 'A' common shares";
 - (iii) immediately following the Deemed Redemption of the Common Shares and the Preferred Shares, delete all previously authorized and unissued Common Shares and Preferred Shares and the rights, privileges, restrictions, and conditions attaching thereto, in order that, after giving effect to the foregoing, the class and maximum number

of shares that Capcium is authorized to issue shall consist of an unlimited number of Class "A" common shares;

- (iv) immediately following the Deemed Redemption of the Common Shares and the Preferred Shares, cancel any and all agreements, contracts, plans, indentures, deeds, certificates, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), warrants, or other documents or instruments governing, convertible or exchangeable into, and/or having been created or granted in connection with the share capital of Capcium prior to the filing of the articles of reorganization, but excluding for greater certainty the Subscribed Shares issued pursuant to the steps set forth in the Pre-Closing Reorganization Steps; and
 - (v) provide that each of the foregoing amendments shall be deemed to take effect in the order in which they appear above.
- b) Prior to the Closing Date, the Purchasers shall pay the unpaid balance of the Investment Amount, to be held in escrow by the Monitor, on behalf of Capcium, and the entire Investment Amount shall be dealt with in accordance with the Pre-Closing Reorganization Steps. Concurrently with the payment of the balance of the Investment Amount, the Purchasers and Capcium shall enter into a secured, interest-bearing loan agreement with respect to the Investment Amount (less the Subscription Price and the Litigation Claims Purchase Price, but including the Cash Deposit), which secured, interest-bearing loan agreement shall also apply to post-closing investments made by Purchasers.
- a) As of 0:01 am Eastern Time on the Closing Date, Capcium shall be deemed to donate its shares in the capital of ResidualCo 1 for cancellation and its shares in the capital of ResidualCo 2 for cancellation and such shares shall be deemed cancelled immediately.
- b) As of 0:10 am Eastern Time on the Closing Date, the Debtors:
- (i) shall transfer to ResidualCo 1 the Excluded Assets and the Excluded Contracts and ResidualCo 1 shall issue the Excluded Assets and Contracts Promissory Note to the Debtors; and
 - (ii) shall transfer to ResidualCo 2 the Excluded Liabilities and the Debtors shall issue the Excluded Liability Promissory Note to ResidualCo 2.
- c) As of 0:20 am Eastern Time on the Closing Date, Capcium shall be deemed to transfer to Purchaser 2 the Litigation Claims, in consideration for the Litigation Claims Purchase Price forming part of the Investment Amount.

- d) As of 0:30 am Eastern Time on the Closing Date, all issued and outstanding shares of the Vendor as well as any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with the share capital of Capcium shall be deemed redeemed, terminated and cancelled for no consideration.
- e) As of 0:40 am Eastern Time on the Closing Date, the Vendor shall issue 100 Class “A” common shares in the capital of the Vendor, to be subscribed for by Purchaser 1 and issued by Capcium (the “**Subscribed Shares**”) in consideration for the Subscription Price forming part of the Investment Amount.
- f) The Monitor, on behalf of Capcium, shall use the proceeds of the Investment Amount (including the Cash Deposit) to reimburse the Interim Financing, and The Bank of Nova Scotia (“**Scotia**”), as interim Lender, and Purchaser 1 shall enter into an agreement to assign the unpaid portion of the Interim Financing to Purchaser 1 immediately after the repayment made by the Monitor, on behalf of Capcium (the “**Assignment of the Interim Financing**”).
- [14] **ORDERS** and **DECLARES** that upon the issuance of Monitor’s certificate substantially in the form appended as **Schedule “B”** hereto (the “**Assignment Certificate**”), all of the rights and obligations of Scotia, in its capacity as interim lender, under the Interim Financing Documents (as defined in the Initial Order) and the orders of this Court made in connection therewith, including for greater certainty, all of Scotia’s rights title and interest in and to the Interim Financing Charge, shall be assigned to and vested in Purchaser 1, effective as of the applicable time and date of the Assignment Certificate.
- [15] **ORDERS** and **DECLARES** that the Pre-Closing Reorganization Steps shall be deemed to occur in the manner, order and sequence specified thereunder, with such alterations, changes, amendments, deletions or additions thereto as are permitted under the Purchase Agreement or as may otherwise be agreed to by the Monitor and the Purchasers, which shall post any amendment to the Pre-Closing Reorganization Steps on its website;
- [16] **AUTHORIZES** the Monitor, for and on behalf of the Vendor, ResidualCo 1 and ResidualCo 2, as the case may be, to:
- a) execute and deliver any documents and assurances governing or giving effect to the Pre-Closing Reorganization as the Monitor may deem to be reasonably necessary or advisable to conclude the Pre-Closing Reorganization, including the execution of such deeds, contracts or documents, as may be contemplated by the Pre-Closing Reorganization

and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

- b) take such steps as are deemed necessary or incidental to the implementation of the Pre-Closing Reorganization.
- [17] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Monitor, the Debtors, ResidualCo 1 and ResidualCo 2 to proceed with the Pre-Closing Reorganization and that no director, shareholder, contractual or regulatory approval shall be required in connection with any of the steps contemplated pursuant to the Pre-Closing Reorganization.
- [18] **ORDERS** and **DECLARES** that the Pre-Closing Reorganization steps may be amended, altered or changed as may be agreed to by the Purchasers and the Debtors, with the consent of the Monitor, provided that such amendments, alterations or changes do not materially alter or impact the Transactions or the consideration which the Debtors and/or its applicable stakeholders will benefit from as part of the Transactions.
- [19] **ORDERS** and **DECLARES** that the Monitor, for and on behalf of the Vendor, ResidualCo 1 and ResidualCo 2, is hereby permitted to execute and file articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Pre-Closing Reorganization and that such articles, documents or other instruments shall be deemed to be duly authorized, valid and affective 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 to effect the Pre-Closing Reorganization.

SALE APPROVAL

- [20] **AUTHORIZES** and **ORDERS** the Debtors, ResidualCo 1, ResidualCo 2, the Purchasers and the Monitor, as applicable and as the case may be, to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor and any other ancillary document which could be required or useful to give full and complete effect thereto and to implement the Transactions.
- [21] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Monitor, the Debtors, ResidualCo 1 and ResidualCo 2 to proceed with the Purchase and Sale Transactions and any other transactions or steps forming part of the Transactions, and that no director (in the case of ResidualCo 1 and ResidualCo 2), shareholder, contractual or regulatory approval, if applicable, shall be required in connection therewith.

**VESTING OF SUBSCRIBED SHARES AND TRANSFER OF EXCLUDED ASSETS,
EXCLUDED CONTRACTS AND EXCLUDED LIABILITIES**

[22] **ORDERS** and **DECLARES** that upon the issuance of Monitor's certificate substantially in the form appended as **Schedule "C"** hereto (the "**Closing Certificate**"):

- a) all rights, title and interests in and to the Subscribed Shares shall vest absolutely and exclusively in and with Purchaser 1, free and clear of any Encumbrances of and from any and all claims, Liabilities (direct, indirect, absolute or contingent), including, for greater certainty, any Liabilities in respect of Employees, obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights) encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances or charges created by order of this Court including the Administration Charge and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable/immovable property or any other personal or real property registry systems and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Subscribed Shares be cancelled and discharged as against the Subscribed Shares, in each case effective as of the applicable time and date of the Closing Certificate.
- b) all rights, title and interest in and to the Retained Assets shall remain in the Debtors and be free and clear of and from any Encumbrances, including without limiting the generality of the foregoing all Encumbrances or charges created by order of this Court including the Administration Charge and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable/immovable property or any other personal or real property registry systems, excluding, however, the permitted encumbrances and restrictive covenants as provided in **Schedule "D"** to this Order (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Retained Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Retained Assets, in each case effective as of the applicable time and date of the Closing Certificate;
- c) all of the right, title and interest in and to the Excluded Assets, if any, shall vest absolutely and exclusively in ResidualCo 1, and all Claims (as defined below) and Encumbrances (shall continue to attach to the Excluded Assets in accordance with paragraph [22j]) of this Order, with the same nature and priority as they had immediately prior to the transfer;

- d) all Excluded Contracts shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo 1 such that the Excluded Contracts shall exclusively become obligations of ResidualCo 1 and shall no longer be obligations of the Debtors, and the Debtors shall be forever released and discharged from all obligations under such Excluded Contracts;
- e) all Excluded Liabilities (which for greater certainty includes any liability or obligation of the Debtors, of any kind, character or description, whether known or unknown, absolute or contingent, accrued or not accrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accounted or disclosed on the financial statements of the Debtors, including, for greater certainty, any Liabilities in respect of Employees, other than Assumed Liabilities) and, for the avoidance of doubt, the Excluded Liabilities include all severance, termination pay, or indemnity in lieu of notice owed to Employees, whether or not such amounts have become due and payable until on or after the Closing Date, shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo 2, such that the Excluded Liabilities shall exclusively become obligations of ResidualCo 2 and shall no longer be obligations of the Debtors, and the Debtors shall be forever released and discharged from all obligations under such Excluded Liabilities;
- f) any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, warrants, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with share capital of Capcium, that were existing prior to the Pre-Closing Reorganization, if any, shall be deemed terminated and cancelled;
- g) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action against the Debtors in respect of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall be permanently enjoined and barred. Such prohibition shall not, however, preclude the rights of the Canada Revenue Agency (the “**CRA**”) or of the Agence du revenu du Québec (the “**ARQ**”) to effect compensation as provided in section [23] hereof;
- h) the Assumed Liabilities including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Purchase Agreement or the steps and actions taken in accordance with the terms thereof;

- i) the nature and attributes (including rights resulting from existing defaults of the Debtors) 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 and assumption by ResidualCo 2; and
- j) any Person that, prior to the Closing Date, had a valid right or claim against any of the Debtors in respect of the Excluded Liabilities (each a “**Claim**”) shall no longer have such Claim against the Debtors, but will have an equivalent Claim against ResidualCo 2 in respect of the Excluded Liabilities from and after the Closing Date in its place and stead, with the same attributes and rights resulting from existing defaults of the Debtors, and nothing in this Order limits, lessens, modify (other than by change of debtor) or extinguishes the Excluded Liabilities or the Claim of any Person as against ResidualCo 2 which shall be the sole and exclusive debtor of the Claim.

[23] **ORDERS** and **DECLARES** that, subject to the provisions of section [22g)] hereof, the reverse vesting structure of the Transaction, as approved by this Order, shall not affect the rights (if any) of CRA, ARQ or the Debtors pursuant to section 21 of the CCAA, as relates to any and all claims existing or arising from events which occurred prior to the issuance of the Closing Certificate or occurred pursuant to the terms of this Order and/or in connection with the Transactions;

[24] **ORDERS** and **DECLARES** that upon issuance of the Closing Certificate, all Persons shall be deemed to have waived any and all defaults of and rights of action against the Debtors or their successors then existing or previously committed by the Debtors or caused by the Debtors, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, including any change in ownership or change in control provision, in any Retained Contract, arising from the CCAA Proceedings or the completion of the Transactions, including as a result of any of the matters or events listed in paragraph [30] hereof, and any and all notices of default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded.

[25] **ORDERS** and **DIRECTS** the Monitor to issue the Closing Certificate and to file it with the Court as soon as practicable upon the occurrence of the closing of the Transactions.

CANCELLATION OF SECURITY REGISTRATIONS

[26] **ORDERS** the Québec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Closing Certificate, to strike the registrations as provided in **Schedule “E”**.

[27] **ORDERS** that, upon the issuance of the Closing Certificate, the Purchasers and the Debtors shall be authorized to take all such steps as may be necessary to effect the discharge or reduction in scope of all Encumbrances other than the Permitted Encumbrances affecting or relating to the Retained Assets and the Subscribed Shares, provided that the Purchasers shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than to the extent affecting or relating the Retained Assets or the Subscribed Shares, and the Monitor and the Purchasers shall be authorized to take any further steps by way of further application to this Court.

RETAINED CONTRACTS

[28] **ORDERS** that all Cure Costs payable in accordance with the Purchase Agreement, if any, shall be paid by the Debtor to the relevant counterparty to each Retained Contract on or before the Closing Date or such later date as may be agreed to by the Purchasers, the Monitor and the relevant counterparty to a Retained Contract.

[29] **PRAYS ACT** of the Purchasers' confirmation that it has an agreement with the Landlord regarding the Landlord Consent and Agreement.

[30] **ORDERS** that all Retained Contracts shall remain in full force and effect, and following the Closing Date, no Person who is a counterparty to any such Retained Contracts (a "**Retained Contracts Counterparty**") may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right, entitlement or remedy (including any right of set-off) or make any demand under or in respect of such Retained Contracts and no automatic termination will have any validity or effect, by reason of:

- a) any circumstance that existed or event that occurred on or prior to the Closing Date that would have entitled such Retained Contracts Counterparty to enforce those rights or remedies or caused an automatic termination to occur, including any monetary defaults or defaults or events of default arising as a result of the insolvency of any Debtor or the cessation of the Debtors' normal course of business operations;
- b) the insolvency of any Debtor or the fact that relief in respect of the Debtors was granted under the CCAA;
- c) any releases, discharges, cancellations, transactions or other steps taken or effected pursuant to the Purchasers' asset purchase transaction in these CCAA Proceedings, including all agreements in connection with such asset purchase transaction, the Purchase and Sale Transactions (including the Pre-Closing Reorganization), the provisions of this Order or any other Order of the Court in these proceedings; or
- d) any change of control of the Debtors arising from the implementation of the Transactions, or any anti-assignment or similar provision restricting assignment or requiring the consent of any Person to an assignment or a

change of control (an “**Anti-Assignment Provision**”) in a Retained Contract and, for greater certainty, the Transactions and their implementation shall be deemed not to constitute a change in ownership or change in control under any Retained Contract.

PROTECTION OF PERSONAL INFORMATION

[31] **ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor is authorized, permitted and directed to, at the Closing Time, disclose to the Purchasers all human resources and payroll information in the Debtors’ or their successors’ records pertaining to past and current employees of the Debtors or their successors. The Purchasers 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 that is in all material respects identical to the prior use of such information by the Debtors or their successors.

CCAA DEBTORS

[32] **ORDERS** and **DECLARES** that, upon filing of the Closing Certificate:

- a) ResidualCo 1 and ResidualCo 2 are companies to which the CCAA applies;
- b) ResidualCo 1 and ResidualCo 2 shall be added as Debtors in these CCAA Proceedings and any reference in any Order of this Court in respect of these CCAA Proceedings to a “Debtor” or the “Debtors” shall refer to ResidualCo 1 and ResidualCo 2, *mutandis mutandis* and, for greater certainty, each of the CCAA Charges (defined in the Initial Order) shall also constitute a charge on the property of ResidualCo 1 and ResidualCo 2; and
- c) Capcium Inc. and Gelcan Corporation Inc. shall be deemed to cease to be a Debtor in these CCAA Proceedings, and Capcium Inc. and Gelcan Corporation Inc. shall be released from the purview of any Order of this Court granted in respect of these CCAA Proceedings, save and except for the present Order the terms of which (as they related to any such entity) shall continue to apply in all respects.

[33] **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) (the “**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 ResidualCo 1 and/or ResidualCo 2,

the implementation of the Transactions, including the transfer of the Excluded Assets, Excluded Contracts to ResidualCo 1 and of the Excluded Liabilities to ResidualCo 2 and the implementation of the Purchase and Sale Transactions under and pursuant to the Purchase Agreement, (i) shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors or ResidualCo 1 and ResidualCo 2 and shall not be void or voidable by creditors of the Debtors, ResidualCo 1 or ResidualCo 2, as applicable (ii) shall not constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transactions under the BIA or any other applicable federal, provincial or territorial legislation, and (iii) shall not constitute nor be deemed to be oppressive or unfairly prejudicial conduct by the Debtors, ResidualCo 1, ResidualCo 2 or the Released Parties pursuant to any applicable federal, provincial or territorial legislation.

ASSIGNMENT IN BANKRUPTCY OF RESIDUALCO

- [34] **ORDERS** and **DECLARES** that the Monitor is authorized, entitled and empowered to assign or cause to be assigned, at any time after the issuance of the Closing Certificate, ResidualCo 1 and/or ResidualCo 2 into bankruptcy and the Monitor shall be entitled but not obligated to act as trustee in the bankruptcy of ResidualCo 1 and/or ResidualCo 2.

RELEASES

- [35] **ORDERS** that effective upon the issuance of the Closing Certificate, (i) any director, officer, employee, legal counsel or advisor of ResidualCo 1 and ResidualCo 2, (ii) the Monitor and its directors, officers, employees, legal counsel and advisors and (iii) the Purchasers and their respective directors, officers, employees, legal counsel and advisors and (the Persons listed in (i) to (iii) being collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (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, offer, investment proposal, dealing, statutory declaration under the *Business Corporations Act* (Québec) or *Canada Business Corporations Act* as permitted pursuant to the terms of this Order, or other occurrences existing or taking place prior to the issuance of the Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions, including any claims in favour of CRA and ARQ which may result subsequent to the compensation provided in section [23] hereof, in respect of the Debtors or their assets, business or affairs, or prior dealings with the Debtors, wherever or, however, conducted or governed, the administration and/or

management of the Debtors and these proceedings (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, and are not vested nor transferred to ResidualCo 1 or ResidualCo 2 or to any other entity and are extinguished, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any liability arising out of the gross negligence or wilful misconduct of the Released Party.

THE MONITOR

- [36] **PRAYS ACT** of the Monitor’s Report and **APPROVES** the activities of the Monitor up until the date of the present Order in connection with the present restructuring proceedings, as described in its Reports to this Court and as discussed during the Monitor’s testimony before this Court.
- [37] **DECLARES** that the Monitor has satisfied its obligations pursuant to the CCAA and in compliance with the orders granted by this Court up until the date of the present Order, including the Initial Order.
- [38] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Retained Assets or of the Subscribed Shares (or of any other assets of the Debtors). The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Retained Assets (or of any other assets of the Debtors) within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA, and **DECLARES** that the Monitor, its employees and representatives shall not be deemed directors of ResidualCo 1 or ResidualCo 2, *de facto* or otherwise.
- [39] **DECLARES** that the Monitor, its employees and representatives are not deemed, directors, officers or fiduciaries of the Debtors, ResidualCo 1 or ResidualCo 2, *de facto* or otherwise, and that they are not liable for any action taken in accordance with this Order. For greater certainty, Mr. Dominic Deslandes, shall not incur any personal liability resulting from or in connection with the fact that he is designated as a director of ResidualCo 1 and ResidualCo 2. Subject to the foregoing, the Monitor and its representatives are authorized, for administrative purposes only, namely, to take all actions necessary in order to give effect to this Order, to act in lieu and in the place of the board of directors of the Debtors, ResidualCo 1 and ResidualCo 2.
- [40] **DECLARES** that no action lies against the Monitor by reason of this Order, or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL

- [41] **ORDERS** that Appendices A, B and C of the Report (**P-5**) are confidential and shall be filed under seal until further order of this Court.
- [42] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [43] **DECLARES** that the Purchaser or the Monitor shall be authorized to apply as it 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 the 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 Applicants, the Purchaser or the Monitor as may be deemed necessary or appropriate for that purpose.
- [44] **REQUESTS** the aid and recognition of any court or administrative body in any province or territory of Canada and any Canadian federal court or administrative body and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [45] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.



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Michel A. Pinsonnault
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Hearing date: September 22, 2023