No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

ORDER MADE AFTER APPLICATION

(Amended and Restated Initial Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	08/June/2020
	)	

THE APPLICATION of the Petitioners coming on for hearing via telephone conference, on the 8th day of June, 2020 (the "**Order Date**"); AND ON HEARING David E. Gruber and Alexandra Andrisoi, counsel for the Petitioners and those other counsel and parties listed on Schedule "A" hereto all attended via telephone; AND UPON READING the material filed, including the First Report of Ernst & Young, Inc. ("**EY**"), the court appointed Monitor; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. This Amended and Restated Initial Order amends and restates the Order (the "**Initial Order**") of this Court made in these proceedings on May 29, 2020 (the "**Order Date**").

SERVICE

2. The time for service of the Notice of Application dated June 5, 2020 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

JURISDICTION

3. Port Capital Development (EV) Inc. ("**Port Capital GP**") is a company to which the CCAA applies. Pursuant to s. 11 of the CCAA, Evergreen House Development Limited Partnership (together with Port Capital GP, the "**Petitioners**") shall enjoy the benefits of the protections and authorizations provided in this Order, and shall be subject to the same restrictions hereunder.

PLAN OF ARRANGEMENT

4. The Petitioners 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. Subject to this Order and any further Order of this Court, including for clarity the Enhanced Monitor's Powers provided herein, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with

the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

(a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and

(b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:

(i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;

(ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and

(iii) any related corporate matters.

7. Except as otherwise provided herein, and subject to the terms of the Commitment Letter and the Definitive Documents (as hereinafter defined) including for clarity the Enhanced

Monitor's Powers provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably incurred and which are 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, provided that any capital expenditure exceeding $5,000.00 shall be approved by the Monitor;

(b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

(c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

8. The Petitioners are authorized to 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 Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; 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 property taxes, municipal business taxes 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.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners 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 as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the 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 Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are 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 Petitioners to any of their creditors as of the Order Date except as authorized by this Order;

(b) to make no payments in respect of any financing leases which create security interests;

(c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;

(d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and

(e) to not incur liabilities except in the ordinary course of Business.

11. Notwithstanding paragraph **10**, the Petitioners are permitted, with the consent of the Monitor, to make regular payments under all mortgages granted by the Petitioners due and after the Order Date.

RESTRUCTURING

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

(a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding $10,000.00 in any one transaction or $100,000.00 in the aggregate. If the disposition of assets exceeds these quantums, the Petitioners shall seek the approval of the Monitor, and if the Monitor deems appropriate, the approval of the Court for such dispositions;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate;

(c) pursue all avenues of refinancing for their Business or Property, in whole or part; and

(d) with the approval of the Court, and subject to this Order and any further Order, including for clarity the Enhanced Monitor's Powers provided herein, and on notice to (i) CMLS Financial Ltd. ("**CMLS**"), (ii) Aviva Insurance Company of Canada

(“**Aviva**”) and (iii) the pre-sale purchasers, deliver a notice of disclaimer or notice of termination of any pre-sale purchase and sale agreements for real property owned by the Petitioners (the "**Pre-Sale Contracts**") pursuant to Section 32 of the CCAA,

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

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' 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 Petitioners' 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 who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If a Petitioner 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 dispute concerning such fixtures (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 Petitioners' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the 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 Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers

advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including September 3, 2020 or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners, or Port Capital Development Inc. or Macario (Tobi) Reyes solely in their capacities as a guarantor, covenantor, indemnifier or similar capacity of any of the Petitioners' debts or liabilities, or the Monitor, or affecting the Business or the Property,

shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. 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 Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

18. Nothing in this Order, including paragraphs **16** and **17**, shall: (i) empower the Petitioners to carry on any business which the Petitioners are 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 mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

19. 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, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioners shall be entitled to the continued use of their 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 Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision 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 Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners 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 Petitioner,

if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

APPOINTMENT OF MONITOR

23. EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners 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.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) assist the Petitioners in sourcing debtor-in-possession financing, and advising the Petitioners in relation thereto;

(b) assist the Petitioners, to the extent required by the Petitioners, in dissemination, to the Interim Lender (as hereinafter defined) and its counsel on a bi-weekly basis of financial and other information as agreed to between the Petitioners and Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;

(c) monitor the Petitioners' receipts and disbursements;

(d) 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;

(e) advise the Petitioners in their preparation of the Petitioners' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than every four weeks following delivery of the initial cash flow projections or as otherwise agreed to by the Interim Lender;

(f) advise the Petitioners in their development of the Plan and any amendments to the Plan;

(g) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) 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 Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

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

25. 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, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or

control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

26. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (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. For greater certainty, 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.

27. The Monitor shall provide any creditor of the Petitioners and the Interim Lender with information provided by the Petitioners 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 Petitioners are 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 Petitioners may agree.

28. 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 rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ENHANCED MONITOR POWERS

29. The expansion of the Monitor's powers set forth below is hereby authorized and approved on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers and duties of the Monitor provided for above and in the CCAA.

30. In addition to the powers and duties of the Monitor set forth above, and without altering in any way the limitations and obligations of the Petitioners arising under this Order and by virtue of the institution of these proceedings, the Monitor is hereby authorized and empowered to:

(a) monitor the activities of any senior officer of the Petitioners in place at the time of this Order or who may be appointed by any subsequent orders of this Court;

(b) receive, collect and take possession of all monies and accounts now owed or hereinafter owing to any of the Petitioners, including without limitation refunds, management fees, dividends, distributions, rents, proceeds payable pursuant to a sale of any of the Petitioners' assets, and any other amounts payable to the Petitioners;

(c) take control of any and all accounts of the Petitioners, including accounts with financial institutions, and take all required acts with any financial institution to facilitate the Monitor's control of such accounts, including changing the signing authority on such accounts to such persons as the Monitor, in its sole discretion, deems appropriate, or, if deemed necessary by the Monitor, open one or more new accounts with any financial institution in the Monitor's own name (collectively the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds from the Petitioners as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties as set out herein, provided that the monies standing to the credit of the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, or any other order to be made by the Court in these proceedings;

(d) oversee and consent to any disbursement or payment required in respect of the Property or the Business, including capital expenditure or other expenditure relating to the preservation or protection of any of the Property and any disbursement or payment made under any order in these proceedings, or, if deemed necessary or appropriate by the Monitor in its sole discretion, make use of funds in the Monitor's Accounts from time to time to make any disbursements or payments for and on behalf of the Petitioners or in connection with the Monitor's exercise of its powers and duties set out herein;

(e) oversee and assist in the preparation of cash flow statements of the Petitioners and assist in the dissemination of financial and other information in these proceedings to those interested parties that, in the Monitor's discretion in consultation with the Petitioners, and in consideration of confidentiality concerns, ought to receive such information, including the delivery of monthly current rent rolls to mortgagees with interests in rental property;

(f) review and investigate the books and records of the Petitioners as necessary to enable the Monitor to exercise and discharge its powers and duties set out herein;

(g) be entitled to rely on the books and records of the Petitioners without independent investigation, unless otherwise ordered by the Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(h) conduct a review of the Petitioners' intercorporate accounts with all affiliates of the Petitioners and any entities managed by the Petitioners that are not Petitioners herein and:

(i) take any steps necessary in the Monitor’s discretion to prevent any of the Petitioners’ monies being transferred to affiliates of the Petitioners, any entities managed by the Petitioners, or any other party in the opinion of the Monitor as appropriate; and

(ii) file a report with the Court regarding same, including any recommendations by the Monitor as to how such intercorporate accounts, or the Petitioners' interests therein, should be dealt with;

(i) on behalf of the Petitioners or on its own behalf, engage such employees or former employees of the Petitioners and such consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, that the Monitor deems, at is sole discretion, to be necessary or appropriate to assist the Monitor with the exercise of the powers and duties conferred by this Order, including, without limitation, a chief restructuring officer and a project manager;

(j) if deemed necessary or appropriate by the Monitor in its sole discretion, subject to such requirements as are imposed by the CCAA, to cause the Petitioners to:

(i) permanently or temporarily cease, downsize or shut down all or any part of the Petitioners' Business or operations;

(ii) terminate the employment of such of the Petitioners' employees or temporarily lay off such of the Petitioners' employees as the Monitor deems appropriate; and

(iii) deliver, pursuant to Section 32 of the CCAA, a notice of disclaimer or notice of termination of any lease or agreement other than Pre-Sale Contracts;

(k) subject to paragraph **31**, with respect to the Pre-Sale Contracts pursuant to paragraph 11(d) of this Order, to determine whether such Pre-Sale Contracts are deemed by the Monitor in its discretion, but in consultation with the Petitioners, CMLS and Aviva, to be in default (the "**Defaulted Pre-Sale Contracts**"), and in the event the Monitor so determines, to seek directions of the Court as to whether such Pre-Sale Contracts ought to be disclaimed, and in the event such Pre-Sale Contracts are disclaimed:

(i) collect the forfeited deposit monies in connection with the Defaulted Pre-Sale Contracts (the "**Forfeited Deposits**"); and

(ii) hold the Forfeited Deposits in trust, subject to the specific security of CMLS and Aviva (subject to the existing priorities as between those parties), pending the results of the SISP or alternatively the Restructuring, and failing CMLS being fully paid via a sale under the SISP or other Restructuring on or before August 31, 2020, these Forfeited Deposits shall be paid to CMLS or Aviva, as the case may be, and applied against the Petitioners' debt owing to CMLS or Aviva, as the case may be;

(l) implement the sales and investment solicitation plan (the "**SISP**") attached hereto as **Schedule** "**B**";

(m) with the consent of CMLS, seek approval of the Court for a sale of all or any part of the Property following the conclusion of the timelines set out in the SISP; and

(n) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred upon the Monitor by this Order or any further order of the Court.

31. Notwithstanding the Monitor's discretion to determine whether Pre-Sale Contracts are in default, CMLS and/or Aviva are at liberty to:

(a) oppose the Monitor's application for directions as to whether such Pre-Sale Contracts ought to be disclaimed; and

(b) to bring an application seeking a declaration of this Court that any Pre-Sale Contract is in default, and in the event the Court declares any Pre-Sale Contract is in default, then the provisions of paragraphs 30(k)(i) and 30(k)(ii) of this Order shall apply.

32. No provision of this Order is intended, or shall be deemed to appoint the Monitor as an officer, director or employer of any of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners. Any distribution made to creditors of the Petitioners or any other Person in accordance with the terms of this Order and any other orders of this Court in these proceedings will be deemed to have been made by the applicable Petitioner and not the Monitor.

33. The Petitioners and their current and former shareholders, officers, directors, employees, agents and representatives shall cooperate fully with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other order of this Court.

ADMINISTRATION CHARGE

34. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amount[s] of $50,000.00 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. Counsel to the Petitioners, the Monitor and its legal counsel shall be careful to differentiate their accounts in this CCAA from time spent in other insolvency matters for related entities to the Petitioners and shall pass their accounts from time to time, and for this purpose the accounts of the Petitioners, the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

36. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners 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 $250,000.00, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs **43** and **46** hereof.

INTERIM FINANCING

37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed $1,250,000 unless permitted by further Order of this Court.

38. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020 (the "**Commitment Letter**"), filed.

39. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the

terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender’s Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender’s Charge shall have the priority set out in paragraphs **43** and **46** hereof.

41. Notwithstanding any other provision of this Order:

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

(b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender’s Charge, the Interim Lender, upon five business days notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Commitment Letter, Definitive Documents and the Interim Lender’s Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioners against the obligations of the Petitioners to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim 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 Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

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

42. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioners 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

43. The priorities of the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

(a) First – Administration Charge (to the maximum amount of $250,000.00);

(b) Second – Interim Lender's Charge.

44. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge and the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

45. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

46. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in

priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge.

47. The Administration Charge, the Interim Lender's Charge, the Commitment Letter and the Definitive Documents 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 Interim Lender 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 the 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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are 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 Petitioners entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter 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.

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

SERVICE AND NOTICE

49. The Monitor shall (i) without delay, publish in the *Vancouver Sun* newspaper a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make the Initial Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than $1000, and (C) prepare a list showing the names and addresses of those 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.

50. The Petitioners and the Monitor are at liberty to serve the Initial Order, this Amended and Restated Initial Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.ey.com/ca/terracehouse

52. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as

recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.ey.com/ca/terracehouse

53. Notwithstanding paragraphs **50** and **52** of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and the Initial Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

54. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

55. Nothing in the Initial Order or this Amended and Restated Initial Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

56. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

57. Each of the Petitioners 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 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, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

58. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

59. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

60. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

61. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and 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.

62. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

63. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the June 8, 2020.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of David E. Gruber
Lawyer for the Petitioners

BY THE COURT

Digitally signed by
Fitzpatrick, J

Digitally signed by
Roberts, Nicole

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	Party represented
Colin D. Brousson	CMLS Financial Ltd., and Desjardins Financial Security Life Assurance Company
Bryan Gibbons	Aviva Insurance Company of Canada
Peter Rubin	The Monitor

Schedule "B"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

Pursuant to a Companies' Creditor Arrangement Act, R.S.C. 1985, c. C – 36 ("**CCAA**") initial order (as may be amended from time to time, the "**Initial Order**") of the Supreme Court of British Columbia (the "**Court**") dated May 29, 2020 in Action No. VLC-S-S-205095, Vancouver Registry (the "**CCAA Proceeding**") in regard to Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (collectively the "**Debtor**"), Ernst & Young, Inc. was appointed as monitor (in such capacity, the "**Monitor**") in the CCAA Proceeding and was granted certain Enhanced Monitor's Powers (as defined in the Initial Order) including the power to implement the Sale and Investment Solicitation Plan set out herein (the "**SISP**") with regard to the assets of the Debtor being chiefly the development property having a legal description of PID: 006-721-397 Lot 18, Except that part of the Canadian Pacific Railway Right-of-Way as described in Absolute Fee Parcel Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92 and the Debtor.

Accordingly, the Monitor intends to conduct this SISP in consultation with CMLS Financial Ltd. and Aviva Insurance Company of Canada (collectively, the "**Secured Creditors**") and the Debtor. The SISP is intended to solicit interest in a sale of, or investment in, the assets and/or the businesses of the Debtor.

Pursuant to the SISP, all qualified interested parties will be provided with an opportunity to participate in the SISP.

OPPORTUNITY AND SISP SUMMARY

1. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Debtor's business and the Property (the "**Opportunity**").

2. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:

    (a) the sale of the Property (as defined in the Initial Order). Interested parties may submit proposals to acquire all, substantially all or a portion of the Property of the Debtor (a "**Sale Proposal**"); and

    (b) the investment in the business operations (the "**Business**") of the Debtor on a going concern basis. Such proposals may take the form of an investment in or proposals to restructure, reorganize or refinance the Business (an "**Investment Proposal**").

3. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Sale Proposal or any Investment Proposal will be on an "*as is, where is*" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor or any of its affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

4. As described more fully in this SISP, the major stages in the SISP will be comprised of the following:

(a) Pre-Marketing: preparation of all marketing material, assembly of all relevant due diligence material, establishment of an electronic data room and preparation of potential buyer/investor lists;

(b) Marketing: advertising, contacting potential buyers/investors, responding to requests for information and disseminating marketing material to potential buyers and investors; and

(c) Offer Submission and Evaluation: solicitation, receipt of, evaluation and negotiation of offers from potential buyers and investors, as described below.

5. The offer submission and evaluation stage of the SISP will be comprised of a two Phase offering process: "**Phase 1**" being the submission of non-binding asset purchase agreements or investment agreements ("**Agreements**") from qualified bidders, and "**Phase 2**" being the submission of a binding offer from those parties that submitted non-binding Agreements and have been invited by the Debtor to participate in Phase 2 (defined below as Phase 1 Qualified Bidders).

TIMELINE

6. The following table sets out the target dates under the SISP:

Target Dates	**Target Dates**
Phase 1 Non-Binding Bid Deadline	July 10, 2020
Phase 2 Binding Bid Deadline (or Auction Date)	August 7, 2020
Court Approval Date (subject to Court availability)	August 25, 2020
Outside Closing Date	August 31, 2020

7. The target dates set forth above may be adjusted in the sole discretion of the Monitor after consultation with the Secured Creditors and the Debtor.

PRE-MARKETING STAGE

8. As soon as reasonably practicable:

(a) The Monitor will solicit and consider marketing proposals from commercial real estate agents (an “**Agent**”) for the marketing of the Property and negotiate, accept or reject any of such proposals in consultation with the Secured Creditors and the Debtor. For clarity, in consultation with the Secured Creditors and the Debtor the Monitor may reject all such proposals and choose to market the Property directly;

(b) the Monitor or its Agent (if any) 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; (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and its counsel (an "**NDA**"); and (iii) a confidential Information Memorandum ("**CIM**"). The CIM will specifically stipulate that the Monitor makes no representation or warranty as to the accuracy or completeness of the information contained in the CIM, the Data Room (as defined below), or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Monitor;

(c) the Monitor, with the assistance of the Debtor, will gather and review all required due diligence material to be provided to interested parties and shall establish a secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Monitor during the SISP;

(d) the Monitor, in consultation with the Secured Creditors and the Debtor, will develop a draft form of asset purchase agreement and draft form of investment agreement (collectively, the "**Agreement Form**"); and

(e) the Monitor or its Agent (if any), will prepare a list of potential bidders, including: (i) parties that have approached the Debtor, the Monitor or the Agent (if any) indicating an interest in the Opportunity; and (ii) local, national and international strategic and financial parties who the Monitor or the Agent (if any) believe may be interested in purchasing all or part of the Business and Property or investing in the Debtor pursuant to the SISP (collectively, "**Known Potential Bidders**").

MARKETING STAGE

9. The Monitor or its Agent (if any) will arrange for a notice of the SISP (and such other relevant information as the Monitor considers appropriate) (the "**Notice**") to be published in the real estate section of the Globe and Mail (National Edition), and any other newspaper or journals as the Monitor considers appropriate, if any.

10. The Monitor or its Agent (if any) will send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice or otherwise requests such documents as soon as reasonably practicable after such request or identification, as applicable.

11. The Monitor or its Agent (if any) will send the CIM and grant access to the Data Room to those parties who have executed and delivered the NDA to the Monitor or its Agent (if any).

12. Requests for information and access will be directed to a designated representative of the Monitor or the Agent (if any). Without limiting the terms of the NDA, all printed information shall remain the property of the Monitor or the Debtor as the case may be and, if requested by the Monitor, shall be returned without further copies being made and/or destroyed with an acknowledgement that all such material has either been returned and/or destroyed and no electronic information has been retained.

13. Any party who expresses a wish to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM and access to the Data Room, provide to the Monitor and the Debtor an NDA executed by it, and which shall inure to the benefit of any ultimate Successful Bidder, 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.

14. If it is determined by the Monitor in consultation with the Secured Creditors and the Debtor and in the Monitor's reasonable business judgment that a Potential Bidder: (i) has delivered the documents contemplated in paragraph 13 above then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**".

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1: Non-Binding Agreement

Submission Phase

15. At any time prior to the Phase 1 Bid Deadline, the Monitor, in consultation with the Secured Creditors and the Debtor may in their reasonable business judgment, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.

16. 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 Monitor.

17. Phase 1 Qualified Bidders who advise the Monitor or its Agent (if any) that they wish to submit an offer will be provided with a copy of the Agreement Form.

18. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an Agreement to the Monitor or its Agent (if any) at the addresses which will be Debtor and the specified in the Teaser Letter, so as to be received by not later than 5:00 PM (Vancouver time) on or before **July 10, 2020**, or such later date as the Monitor may determine after consultation with the Secured Creditors and the Debtor (the "**Phase 1 Bid Deadline**"). If the Phase 1 Bid Deadline is extended by the Monitor, it shall provide notice of such extension and the revised Phase 1 Bid Deadline to each Phase 1 Qualified Bidder.

19. An Agreement submitted in accordance with above paragraph will be considered a qualified Agreement (a "**Qualified Agreement**") only if:

    (a) it is submitted on or before the relevant Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) in the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and any 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) a specific indication of the financial capability, together with evidence of such capability, of the Phase l Qualified Bidder and the expected structure and financing of the transaction;

        (iv) a description of the conditions and approvals required for a final and binding offer;

        (v) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

        (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

    (c) in the case of an Investment Proposal, it identifies or contains the following:

        (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;

        (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or in the Debtor in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;

(v) a description of the conditions and approvals required for a final and binding offer;

(vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;

(vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(d) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Debtor and/or the Sale Advisor from time to time.

20. The Monitor may, in consultation with the Secured Creditors and the Debtor waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified Agreement. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

21. Following the Phase 1 Bid Deadline, the Monitor will, in consultation with the Secured Creditors and the Debtor, assess the Qualified Agreements. If it is determined by the Monitor that a Phase 1 Qualified Bidder that has submitted a Qualified Agreement (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a "**Phase 2 Qualified Bidder**", provided that the Monitor may, in its reasonable business judgment, in consultation with the Secured Creditors and the Debtor, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

22. As part of the assessment of Qualified Agreements and the determination of the process subsequent thereto, the Monitor, in consultation with the Secured Creditors and the Debtor, shall determine the process and timing to be followed in pursuing Qualified Agreements based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified Agreements received; (ii) the extent to which the Qualified Agreements involve Investment Proposals or Sales Proposals; (iii) the scope of the Property or Business to which any Qualified Agreements may relate; and (iv) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to the Property, all provided that in the event that, prior to the determination of the manner of proceeding to Phase 2 of the SISP, the Monitor or the Debtor has received a proposal to refinance the secured debt owing to CMLS Financial Ltd. satisfactory to CMLS Financial Ltd. then the Monitor may determine to discontinue the SISP upon completion of such refinancing.

23. Upon the determination by the Monitor of the manner in which to proceed to Phase 2 of the SISP, and provided that the SISP is not discontinued, the Monitor will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

24. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter, the Monitor may, in consultation with the Secured Creditors and the Debtor, at any time bring an application to seek approval of a stalking horse asset purchase agreement or investment proposal in respect of some or all of the Property or Business and related bid procedures in respect of such Property or to establish further or other procedures for the SISP.

Due Diligence

25. The Monitor shall in its reasonable business judgment and subject to competitive and other business considerations, afford each Phase 2 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as they deem appropriate. Due diligence access may further include management presentations, on-site inspections, and other matters which a Phase 2 Qualified Bidder may reasonably request and to which the Monitor and/or Debtor, in their reasonable business judgment, may agree. The Monitor and Debtor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 2 Qualified Bidders and the manner in which such requests must be communicated. Neither the Monitor nor the Debtor will be obligated to furnish any information relating to the Property or Business to any person. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.

Phase 2: Formal Offers and Selection of Successful Bidder

26. Paragraphs 27 to 39 below and the conduct of Phase 2 bidding are subject to paragraphs 21 to 24, above, and any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

Formal Binding Offers

27. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Debtor or its Property and Business shall submit to the Monitor or its Agent (if any) a binding offer at the addresses specified in the Bid Process Letter, so as to be received by not later than 5:00 PM (Vancouver Time) on **August 7, 2020**, or such later date as the Monitor may determine after consultation with the Secured Creditors and the Debtor (the "**Phase 2 Bid Deadline**"). If the Phase 2 Bid Deadline is extended by the Monitor, it shall provide notice of such extension and the revised Phase 2 Bid Deadline to each Phase 2 Qualified Bidder. The binding offer shall comply with all of the following requirements:

    (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified Agreements;

    (b) cash is the preferred form of consideration, but if the bid utilizes other consideration, a description of the material terms of the consideration shall be provided;

    (c) 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 Property or Business on terms and conditions reasonably acceptable to the Monitor;

(d) unless otherwise agreed, the bid shall be set forth in a duly authorized and executed transaction agreement in the Agreement Form and shall include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;

(e) the bid shall set forth 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, and the name or names of the ultimately beneficial owner(s) of the Phase 2 Qualified Bidder including their respective percentage interests;

(f) to the extent that a bid is conditional upon new or amended agreements being entered into with other parties, the Qualified Phase 2 Bidder shall provide the proposed terms of such amended or new agreements and identify how such agreements may differ from existing agreements to which the Debtor may be a party. A Phase 2 Qualified Bidder's willingness to proceed without such conditions and, where such conditions are included in the bid, the likelihood of satisfying such conditions, shall be an important factor in evaluating the bid;

(g) 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 Monitor, in consultation with the Secured Creditors and the Debtor, to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;

(h) the bid should not be conditioned on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder;

(i) for a Sales Proposal or an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the purchase price or investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, which shall be paid to the Monitor in trust (the "**Deposit**"). The Deposit shall be submitted upon the Phase 2 Qualified Bidder being selected as the Successful Bidder. The Successful Bidder's Deposit shall be applied as against the Purchase Price;

(j) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and the Debtor prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 2 from the Phase 2 Qualified Bidder); (ii) it 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) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Monitor or any of its employees, representatives, agents or advisors, whether express, implied, statutory or otherwise, regarding the Business, Property, or the Debtor or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor;

(k) all required corporate approvals of the Phase 2 Qualified Bidder have been obtained prior to the submission of the bid;

(l) the bid shall identify any material conditions in favour of the purchaser to be resolved prior to closing the transaction;

(m) the bid is received by the relevant Phase 2 Bid Deadline; and

(n) the bid contemplates a schedule for closing the transaction set out therein which is on or before August 31, 2020**,** which date may be extended by the Monitor in its discretion, following consultation with the Secured Creditors and the Debtor (the "**Closing Date**").

28. Following the Phase 2 Bid Deadline, the Monitor, in consultation with the Secured Creditors and the Debtor, will assess the Phase 2 bids received. The Monitor will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

29. The Monitor, in consultation with the Secured Creditors and the Debtor may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

30. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constitutes a Phase 2 Qualified Bid within three (3) business days of the Phase 2 Bid Deadline, or at such later time as the Debtor and the Sale Advisor deem appropriate.

31. The Monitor may, in consultation with the Secured Creditors and the Debtor, remove any of the Property and the Business of the Debtor from the SISP at any time.

32. The Monitor may, in consultation with the Secured Creditors and the Lender, terminate, at any time, further participation in the Phase 2 Bid Process by any interested party, or to modify dates or procedures as deemed appropriate or necessary, or to terminate the process.

33. The Monitor may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "Qualified Bid".

Evaluation of Competing Bids

34. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price and the net value and form of consideration to be paid provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, including, any conditions attached to the bid and the expected feasibility of conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Monitor, each as determined by the Monitor in consultation with the Debtor and the Secured Creditors.

Selection of Successful Bid

35. The Monitor: (a) will review and evaluate each Phase 2 Qualified Bid, in consultation with the Debtor and the Secured Creditors, and the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and (b) will identify the highest or otherwise best bid (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for the Property or the Business in whole or part. The determination of any Successful Bid by the Debtor shall be subject to approval by the Court.

36. The Monitor shall have no obligation to identify a Successful Bid, and reserves the right, after consultation with the Debtor and the Secured Creditors, to reject any or all Phase 2 Qualified Bids.

37. The Monitor, in consultation with the Debtor and the Secured Creditors, may bring one of the Phase 2 Qualified Bids to Court for approval, or may conduct an auction among two or more of the Phase 2 Qualified Bidders and bring the highest auction bid to Court for approval.

Sale Approval Motion Hearing

38. At the hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Application**") the Monitor shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

39. 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, Phase 1 Qualified Bidders, Agreements, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and the Debtor and such other bidders or Potential Bidders in connection with the SISP. The Monitor may, however, with the consent of the applicable participants, disclose such information to other bidders for the purpose of seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.

40. It is not currently contemplated that any director, officer or senior management employee of the Debtor as of the date of the Initial Order ("**Management**") will have any interest in any Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, including any economic, employment, contractual or other interest in such Phase 1 Qualified Bidder or Phase 2 Qualified Bidder. If any Management has or acquires any such interest in a Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, it shall promptly disclose such interest to the Monitor. Upon being informed of such interest, the Monitor shall take such actions as its deems appropriate to preserve the integrity of the SISP in light of such interest, which actions may include placing restrictions on the information disclosed to such person in connection with the SISP and competing bids and bidders.