Court File No. VLC-S-S205095
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

# AMENDED PETITION RECORD

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**David E. Gruber & Alexandra Andrisoi**
Counsel for the Petitioners
Bennett Jones LLP
Suite 2500 - 666 Burrard Street
Vancouver, BC V6C 2X8
Tel: 604.891.5150
Fax: 604-891-5100

Record provided by: Bennett Jones LLP
Counsel for the Petitioners
Registry: Vancouver
on **May 29, 2020 at 2:00 p.m**.
Time Estimate: 90 minutes
This matter is in front of **Madam Justice Fitzpatrick**

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**PETITION INDEX**

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## PETITION TO THE COURT

**This proceeding is brought by the petitioners for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

## TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner,

(a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or

(d) if the time for response has been set by order of the court, within that time.

| | |
|---|---|
| (1) | The address of the registry is:<br><br>The Law Courts<br>800 Smithe Street<br>Vancouver, British Columbia, V6Z 2E1 |
| (2) | The ADDRESS FOR SERVICE of the petitioner is:<br><br>Bennett Jones LLP<br>2500 Park Place, 666 Burrard Street,<br>Vancouver, B.C. V6C 2X8<br><br>**Attention: David E. Gruber and Alexandra Andrisoi**<br><br>Fax number address for service of the petitioner: 604-891-5100<br><br>E-mail address for service of the petitioner: gruberd@bennettjones.com and andrisoia@bennettjones.com |
| (3) | The name and office address of the petitioner's lawyer is:<br><br>Bennett Jones LLP<br>2500 Park Place, 666 Burrard Street,<br>Vancouver, B.C. V6C 2X8<br><br>**Attention: David E. Gruber & Alexandra Andrisoi** |

## CLAIM OF THE PETITIONERS

### Part 1: ORDERS SOUGHT

1. The Petitioners make an application for an order substantially in the form attached as Schedule A hereto (the "**Initial Order**"), for certain relief, including, *inter alia*, the following:

   a) a declaration that the CCAA applies to the Petitioners;

b) a stay of all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except as otherwise set out in the Initial Order or otherwise permitted by law;

c) a stay of all proceedings and remedies taken or that might be taken in respect of Port Capital Development Inc. or Macario (Tobi) Reyes solely in their capacities as guarantor or covenantor of any of the Petitioners' debts or liabilities;

d) authorizing the Petitioners to carry on business in a manner consistent with the preservation of their property and business and to make certain payments in connection with their business during the CCAA proceeding;

e) appointing Ernst & Young, Inc. ("**EY**") as monitor in these proceedings;

f) authorizing the Petitioners to borrow funds pursuant to an interim debtor-in-possession facility; and

g) authorizing the Petitioners to file with the Court a plan or plans of compromise and arrangement.

**Part 2: FACTUAL BASIS**

2. The Petitioner, Evergreen House Development Limited Partnership ("**Evergreen LP**") and its general partners, the Petitioner, Port Capital Development (EV) Inc. (the "**GP**"), own the "**Terrace House Property**". The Terrace House Property is a high-rise luxury residential strata development in the Coal Harbour neighbourhood, located at 1250 W Hastings St., Vancouver. The project is unique in that the primary structural material is timber. Construction of the Terrace House Property is approximately 20% complete.

3. As at March 24, 2018, the appraised market value of the Terrace Property was approximately $43.5 million. The Terrace House Property's development is currently an undertaking of the Port Capital Group. The Port Capital Group and its related subsidiaries (collectively, the "**Port Capital Group**") is in the business of real estate development and management, with real estate assets primarily in British Columbia, but also in Toronto.

***Corporate structure***

4. The Port Capital Group is divided into two divisions. Its business generally consists of an investment division organized under a company named PortLiving Properties Inc., and a development division under Port Capital Development Inc. ("**Development Inc.**").

5. The development division of the Port Capital Group's business is directly or indirectly owned through Development Inc. These consist of projects under active development and properties that are being held for future development. Development Inc. is a guarantor to much of the indebtedness of the Port Capital Group owing in respect of individual project specific limited partnerships.

6. Each of the development projects in the development portfolio is typically carried out through a project specific limited partnership, with initial equity funding provided by the limited partners (who are mostly at arm's length to Port Capital Group), and subsequent equity funding provided by Development Inc. on an as-needed basis to meet development milestones or bridge project specific financial constraints. As a result, a significant portion of Port Capital Group's debt is comprised of inter-company debt.

7. In addition to the limited partnership, each project generally has a general partner and in most cases a bare trustee, both of which corporations are owned within the Port Capital Group. In the case of the Petitioners, there is no bare trustee, but the structure is otherwise the same.

8. The majority of the development projects of the Port Capital Group consist of mixed-use residential and commercial properties. For the projects completed by the Port Capital Group to date, the residential component of the developments have generally been sold to third party purchasers. The development division's primary economic interest is in earning fees for managing the development process on behalf of the limited partners. For most projects, the Port Capital Group retains all, or a portion, of the commercial component of its projects. Typically, when that occurs the ownership is transferred from the development division under Development Inc. to the investment division of the Port Capital Group.

***<u>Cause of financial difficulties and need to restructure</u>***

9. The Petitioners are undercapitalized in terms of equity and as a result, are unable to meet their obligation to fund any cost overruns on the Terrace House Property project. The construction lender has determined that there are cost overruns that Evergreen LP is responsible to fund, for which funds are not currently available.

10. Also the Port Capital Group has been unable to advance funds such that the Petitioners have not been able to pay interest due to their construction lender.

11. As a result of all these circumstances, the Petitioners' construction lender has stopped advancing under the construction lending facility.

12. The financial difficulties of the Petitioners are attributable to a number of factors, which were compounded by the widespread business closures as a result of the COVID-19 global pandemic. The uncertain financial impact of the current COVID-19 pandemic has resulted in potential investors withdrawing their interest in investing in the Port Capital Group's ongoing projects, and has made it more difficult for the Port Capital Group to attract new investors.

13. The primary cause of the liquidity crisis is that the projects being managed by Development Inc. are undercapitalized in terms of equity, and absent further contributions of equity by the existing limited partners or the addition of new equity partners contributing capital, other entities within the Port Capital Group have had to make up the equity shortfall by way of unsecured intercorporate advances and accrual of fees otherwise payable by the development limited partnerships in order to continue the construction and development processes currently underway. This, in turn has led to friction between the Port Capital Group and certain of its lenders, which has resulted in these lenders showing less flexibility in the negotiation or re-negotiation of existing credit facilities extended to the Port Capital Group.

***Stakeholders***

**(a) Unsecured creditors**

14. The unsecured creditors of the Petitioners mostly consist of:
    a) unsecured trade creditors;
    b) property taxes;
    c) professional services firms including law and accounting firms;
    d) consultants; and
    e) inter-company indebtedness.
15. The unsecured creditors of the Petitioners are owed approximately $8 million.
16. These debts are subordinate to the secured creditors of the Petitioners. A restructuring with the assistance of the proposed Monitor under the CCAA is much more likely to result in an outcome that will allow the unsecured creditors of the Petitioners to realize a return on their debt, as opposed to an uncontrolled liquidation or independent foreclosures of the Petitioners.

**(b) Investors**

17. Evergreen LP is owned by a number of investors who subscribed for limited partnership units. They are at arm's length to the Port Capital Group.

**(c) Secured creditors**

18. The secured creditors of the Petitioners are CMLS Financial Ltd. and Aviva Insurance Company of Canada. The cumulative secured debt of the Petitioners is approximately $34.8 million.

19. Given the significant real estate assets of the Petitioners, the secured creditors have sufficient security and will likely not suffer a shortfall if the Petitioners are permitted an opportunity to restructure. The investors are likely the fulcrum stakeholders.

***Intercorporate indebtedness and guarantees***

20. Based on what appeared in the general ledgers of the Port Capital Group as at February 29, 2020, the intercompany indebtedness owed by Evergreen LP to Development Inc. is

approximately $3.9 million; however, the ledgers have not been audited or reconciled and there may be additional inter-company transactions not captured in this amount.

21. Development Inc. and Mr. Macario Reyes are covenantors on the Petitioners' first mortgage and guarantors of the Petitioners' second mortgage in favour of the project's deposit insurer. Development Inc. and Mr. Reyes are also covenantors, or guarantors, to most credit facilities advanced to the Port Capital Group's various project specific limited partnerships and general partners. If there were enforcement proceedings brought against Mr. Reyes and/or Development Inc. on account of the Petitioners' mortgages, that event would trigger defaults under a large number of other loans within the Port Capital Group, with an aggregate balance of over $400 million.

***Demands for repayment of loan***

22. On May 12, 2020, CMLS Financial Ltd. made demand and issued a Notice of Intention to Enforce Security in respect of the indebtedness of approximately $20,128,000 million owing on its loan, secured, among other things, by a first ranking mortgage against the Terrace House Property. The indebtedness owing to CMLS Financial Ltd. remains outstanding as the Petitioners do not have the funds to repay the indebtedness.

***Anticipated restructuring***

23. The Petitioners have been in negotiations with their secured lenders regarding potential forbearance agreements and with potential investors regarding an equity investment in the overall Port Capital Group, including the Terrace House Property.

24. So far none of these discussions has resulted in an agreement capable of execution that would be beneficial to the stakeholders generally, but the discussions are ongoing.

25. The terms and structure of the Petitioners' restructuring will be finalized with the assistance of EY, as Monitor, if the relief sought by the Petitioners pursuant to the CCAA is granted by this Honourable Court. However, a proposed restructuring will likely involve:

    (a) obtaining an equity investment to recapitalize the Petitioners generally, but if that proves not to be possible:

1. making cash calls on existing limited partners to increase the equity capital available;
2. replacing existing limited partners with new ones able and willing to contribute additional capital; and/or
3. selling further limited partnership units to new equity investors; and

(b) liquidating assets in an orderly way that deals with the impact of intercorporate debt and intercorporate guarantees.

26. The Petitioners are applying for relief under the CCAA because they require, among other things, the stay of proceedings sought in order to preserve the status quo and stay the actions of its creditors, so that the Petitioners may continue to operate its businesses and explore restructuring opportunities.

***Appointment of Monitor***

27. EY has consented to be appointed monitor in these proceedings.

***Administration Charge***

28. It is contemplated that the proposed Monitor, counsel for the proposed Monitor and counsel to the Petitioners would be granted a first priority Court-ordered charge on the assets, property and undertaking of the Petitioners, in priority to all claims, up to the maximum amount of $250,000 in respect of their respective fees and disbursements, incurred at standard rates and charges (the "**Administration Charge**").

29. The Petitioners believe that the Administration Charge is necessary to ensure these professionals' continued assistance.

***Interim Lending Facility***

30. The cash-flow statement prepared in support of the Petitioners' application contemplates that the Petitioners will requires interim financing in order to facilitate an efficient and orderly restructuring. The Petitioners are working with the proposed Monitor to identify a

lender to provide debtor-in-possession financing in the approximate principal amount of $1 million (the "**DIP Facility**").

31. The Petitioners expect the terms of the DIP Facility will require that any funds advanced be secured by a second-ranking charge (subordinate only to the proposed Administration Charge) secured against the property of the Petitioners in accordance with the terms of the Initial Order (the "**DIP Facility Charge**").

32. The DIP Facility and DIP Facility Charge are necessary to facilitate the restructuring activities of the Petitioners in these CCAA proceedings. Access to the funds proposed to be advanced under the contemplated DIP Facility would enhance the prospect of a viable compromise or arrangement being made in respect of the Petitioners.

***Conclusion***

33. The Petitioners are currently unable to meet their obligations as they come due, including amounts owing to their secured creditors and unsecured creditors. The Petitioners are seeking a stay of proceedings and additional and other relief under the CCAA in order to maintain the status quo and provide the Petitioners with the much needed breathing room to explore restructuring opportunities with the assistance of the Monitor.

34. The Petitioners believe that this CCAA proceeding is the best means of maximizing the recovery to the Petitioners' creditors and stakeholders.

**Part 3: LEGAL BASIS**

1. The *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended;
2. *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended;
3. The inherent and equitable jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

At the hearing of this Petition, the Petitioners will rely on:

1. Affidavit # 1 of Macario (Tobi) Reyes made May 18, 2020 and filed herein;
2. The pre-filing report of the proposed Monitor, to be filed;

3. Such further and other materials as counsel may advise and this Honourable Court may allow.

The Petitioner estimates that the hearing of the petition will take 90 minutes.

Date: May 19, 2020

______________________________
**David E. Gruber**
Lawyer for the Petitioners

THIS PETITION is prepared and delivered by **David E. Gruber** of Bennett Jones LLP, whose place of business and address for service is 2200 – 1055 West Hastings Street, Vancouver, British Columbia, V6E 2E9 Phone: (604) 891-5150 Fax: (604) 891-5100

**To be completed by the court only:**

Order made

[ ] in the terms requested in paragraphs ______________ of Part 1 of this petition

[ ] with the following variations and additional terms:

Date: May ___, 2020

______________________________
Signature of [ ] Judge [ ] Master

Schedule "A" to Petition

**No. _____________**
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**ORDER MADE AFTER APPLICATION**

**(Initial Order)**

| | | |
|---|---|---|
| BEFORE THE HONOURABLE | ) | |
| MADAM JUSTICE FITZPATRICK | ) | 21/MAY/2020 |
| | ) | |

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 21st day of May, 2020 (the "**Order Date**"); AND ON HEARING David E. Gruber and Alexandra Andrisoi, counsel for the Petitioners and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Macario (Tobi) Reyes sworn May 18, 2020 and the consent of Ernst & Young, Inc. ("**EY**") to act as Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; 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:

**JURISDICTION**

1. The Petitioners are companies to which the CCAA applies. For greater certainty, Evergreen House Development Limited Partnership shall enjoy the benefits of the protections provided herein, and shall be subject to the same restrictions hereunder.

**SUBSEQUENT HEARING DATE**

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph **[15]** of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at ______ __.m. on __________, the _____ day of __________, 2020 or such other date as this Court may order.

**PLAN OF ARRANGEMENT**

3. 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**

4. Subject to this Order and any further Order of this Court, 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

deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. 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.

6. Except as otherwise 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 **[5(b)]** which may be incurred after the Order Date.

7. 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.

8. 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.

9. 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.

10. Notwithstanding paragraph **[9]**, 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**

11. 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; and

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

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

12. 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.

13. 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.

14. 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**

15. Until and including June 1, 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 their capacities as a guarantor 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.

16. 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.

17. Nothing in this Order, including paragraphs **[15]** and **[16]**, 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**

18. 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**

19. 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**

20. 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**

21. 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**

22. 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.

23. 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) monitor the Petitioners' receipts and disbursements;

(c) 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;

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

(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 semi-monthly, 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 Petitioner, to the extent required by the Petitioner, 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 Petitioner, 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.

24. 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.

25. 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.

26. 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.

27. 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**

28. 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.

29. 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 in excess of $5,000.00 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) provide information and documents as may reasonably be requested by the Interim Lender;

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

(i) 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 fil 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;

(j) 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;

(k) 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 ro 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 a notice of disclaimer or notice of termination of any lease or agreement pursuant to Section 32 of the CCAA;

(l) seek approval of the Court for a sale of all or any part of the Property;

(m) develop and seek Court approval of a claims process to be implemented by the Monitor; 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.

30. 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.

31. 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**

32. 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 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

33. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the 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.

34. 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 **[41] and [43]** hereof.

**INTERIM FINANCING**

35. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from ______________________ (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 $_______________ unless permitted by further Order of this Court.

36. 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____________________(the "**Commitment Letter**"), filed, as amended, if necessary, to reflect the terms of this Order.

37. 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.

38. 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 **[41] and [43]** hereof.

39. 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 5 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 Petitioner; 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.

40. Unless it otherwise agrees, the Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners 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**

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

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

Second – Interim Lender's Charge.

Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge and the Directors' 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.

42. 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.

43. 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 and the Director's Charge.

44. The Administration Charge, the Director's Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the 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 Petitioner; 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 it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the 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 Petitioners 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.

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

**SERVICE AND NOTICE**

46. The Monitor shall (i) without delay, publish in ______________________________ a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this 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.

47. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or 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.

48. 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: ______________________

49. 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: ____________________

50. Notwithstanding paragraphs **[53]** and **[54]** of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this 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**

51. 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.

52. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

60. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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

REGISTRAR

**Schedule "A"**

(List of Counsel)

| **Counsel name/litigant** | **Party represented** |
|---|---|
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| | |
| | |
| | |

No. S205095
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

RESPONDENTS

**RESPONSE TO PETITION**

Filed by: AR-CON HOLDINGS LTD. (the "Petition Respondent")

THIS IS A RESPONSE TO the Petition filed May 19, 2020.

**Part 1: ORDERS CONSENTED TO**

The Petition Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: NIL

**Part 2: ORDERS OPPOSED**

The Petition Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the petition: NIL

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Petition Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the petition: 1 (a) to (g).

**Part 4: FACTUAL BASIS**

N/A

**Part 5: LEGAL BASIS**

N/A

**Part 6: MATERIAL TO BE RELIED ON**

N/A

Dated: May 28, 2020

Philip Di Tomaso, Signature of lawyer for Petition Respondent

Petition Respondent's address for service:

McKechnie & Company
Barristers
300 – 1122 Mainland Street
Vancouver, BC V6B 5L1

Fax number address for service (if any): 604-669-7715

E-mail address for service (if any): Phil@mckechnie.bc.ca

Name of the Petition Respondent's lawyer: Philip Di Tomaso

**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**

**(Initial Order)**

| | | |
|---|---|---|
| BEFORE THE HONOURABLE | ) | |
| MADAM JUSTICE FITZPATRICK | ) | 29/MAY/2020 |
| | ) | |

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 29th day of May, 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; AND UPON READING the material filed, including the First Affidavit of Macario (Tobi) Reyes sworn May 18, 2020 and the consent of Ernst & Young, Inc. ("**EY**") to act as Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; 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:

**JURISDICTION**

1. 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.

**SUBSEQUENT HEARING DATE**

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at ______ __.m. on ____________, the _____ day of June 2020 or such other date as this Court may order.

**PLAN OF ARRANGEMENT**

3. 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**

4. 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.

5. 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.

6. Except as otherwise provided herein, 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 **[5(b)]** which may be incurred after the Order Date.

7. 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.

8. 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.

9. 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.

10. Notwithstanding paragraph **9**, 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**

11. 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**").

12. 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.

13. 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.

14. 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**

15. Until and including _______________, 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.

16. 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.

17. Nothing in this Order, including paragraphs **15** and **16**, 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

18. 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

19. 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**

20. 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**

21. 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**

22. 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.

23. 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) monitor the Petitioners' receipts and disbursements;

(c) 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;

(d) advise the Petitioners in their preparation of the Petitioners' cash flow statements;

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

(f) 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;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the 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;

(h) 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

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

24. 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.

25. 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.

26. The Monitor shall provide any creditor of the Petitioners 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.

27. 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**

28. 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.

29. 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 **30**, 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.

30. 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 29(k)(i) and 29(k)(ii) of this Order shall apply.

31. 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.

32. 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**

33. 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.

34. 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.

35. 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 **36** and **38** hereof.

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

36. The Administration Charge (to the maximum amount of $250,000.00) shall have first priority over any other charge, if any, created by this Order. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge shall not be

required, and that the Administration Charge 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 Administration Charge coming into existence, notwithstanding any failure to file, register or perfect any such Administration Charge.

37. The Administration Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Administration Charge 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.

38. 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 Administration Charge, unless the Petitioners obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge.

39. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the "**Chargees**") 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 Petitioner; and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Petitioners of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge;

(c) the payments made by the Petitioners pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

**SERVICE AND NOTICE**

41. 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 this 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.

42. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or 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.

43. 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

44. 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

45. Notwithstanding paragraphs **42** and **44** of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this 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**

46. 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.

47. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

55. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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

______________________________

REGISTRAR

**<u>Schedule "A"</u>**

(List of Counsel)

| **Counsel name/litigant** | **Party represented** |
|---|---|
| Colin D. Brousson | CMLS Financial Ltd. |
| William Roberts | Aviva Insurance Company of Canada |
| Peter Rubin | The Monitor |
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**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<br>(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.

Court File No. VLC-S-S-205095
No.__________________
Vancouver Registry

This is the 1st affidavit
of Macario (Tobi) Reyes in this case
and it was made on May 18, 2020

**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

**AFFIDAVIT**

I, Macario (Tobi) Reyes, businessman, c/o 2500, 666 Burrard Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a director and officer of the Port Capital Group Inc. ("**Group Inc.**"), as well as a director and officer of the Petitioner Port Capital Development (EV) Inc. (the "**GP**"), and as such I have personal knowledge of the facts hereinafter deposited, except where such facts are stated to be based upon information and belief and where so stated I believe such facts to be true.

2. I make this affidavit in support of an application by the Petitioners pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), for certain relief including, among other things, the following:

(a) a declaration that the CCAA applies to the Petitioners;

(b) a stay of all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except as otherwise set out in the Initial Order or otherwise permitted by law;

(c) a stay of all proceedings and remedies taken or that might be taken in respect of Port Capital Developments Inc. or Macario (Tobi) Reyes solely in their capacities as guarantor or covenantor of any of the Petitioners' debts or liabilities;

(d) authorizing the Petitioners to carry on business in a manner consistent with the preservation of their property and business and to make certain payments in connection with their business during the CCAA proceeding;

(e) appointing Ernst & Young, Inc. ("**EY**") as monitor in these proceedings;

(f) authorizing the Petitioners to borrow funds pursuant to an interim debtor-in-possession facility; and

(g) authorizing the Petitioners to file with the Court a plan or plans of compromise and arrangement.

## EVERGREEN HOUSE DEVELOPMENT LP ("EVERGREEN LP")

3. The Petitioner, Evergreen House Development Limited Partnership ("**Evergreen LP**") and its GP, own the **"Terrace House Property"**. The Terrace House Property is a high-rise luxury residential strata development in the Coal Harbour neighbourhood, located at 1250 W Hastings St., Vancouver. The project is unique in that the primary structural material is timber. Construction of the Terrace House Property is approximately 20% complete. As at March 24, 2018, the appraised market value of the Terrace House Property was approximately $43.5 million.

4. The Terrace House Property's development is currently an undertaking of the Port Capital Group (defined below).

## HISTORY OF THE PORT CAPITAL GROUP

5. Group Inc. and its related subsidiaries (collectively, the "**Port Capital Group**") is in the business of real estate development and management, with real estate assets primarily in British Columbia, but also in Toronto. The Port Capital Group has also pursued the acquisition of

properties in the United States, and particularly Seattle, but no acquisitions have been completed so far.

6. I founded the Port Capital Group in 2003 as a real estate investment company, when I, along with several partners, purchased a warehouse in Mount Pleasant, Vancouver, which subsequently led to the creation of the "**PortLiving**" brand, under which the Port Capital Group undertakes development and investment operations. Multiple transactions in the first five years after its creation helped the company develop a track record and reputation with lenders and investors in the Vancouver real estate market.

7. Until about 2009, PortLiving's primary focus was repositioning and reselling assets to facilitate capital returns. Following this stage, strategic opportunities were identified in the Port Capital Group's asset portfolio which led to PortLiving's first venture into ground-up development, a high profile building known as South Creek Landing, at the foot of the Cambie Street Bridge, specifically 2211 Cambie Street, in 2010.

8. PortLiving went on to develop mixed-use projects at 150 East Cordova Street in the downtown eastside, the Vya condo complex at 225 Kingsway, and the first phase of the Living Midtown project on East Broadway near Fraser Street, among others. The commercial/residential developments the Port Capital Groups undertakes under the PortLiving brand focus on creating a sense of place and community in Vancouver's urban neighbourhoods. The PortLiving brand's objective is to not only provide housing opportunities, but also develop amenities and job spaces within its developments to add a greater sense of vibrancy to the area.

9. In 2016, the Port Capital Group acquired its first site in Toronto's popular annex neighbourhood, and eventually assembled a 15,000+ square foot site, and then completed the acquisition of another site by 2018. In 2019, the Port Capital Group assembled a significant hotel/condominium site of nearly two acres along the Skaha Lake waterfront in the southern tip of Penticton, B.C. and completed the acquisition of Wild Goose Winery in Okanagan Falls, both of which businesses the Port Capital Group continues to operate.

10. To date, PortLiving's mission has been to assemble strategic properties in prime areas such as Mount Pleasant in Vancouver, Yorkville in Toronto and the Southern Okanagan. As of the end

of 2019, the Port Capital Group has completed five development projects, and has eighteen (18) projects in various stages of development and completion (two of which are in Toronto, Ontario).

## CORPORATE STRUCTURE

11. The Port Capital Group is divided into two divisions. Its business generally consists of an investment division organized under Group Inc.'s subsidiary, a company named PortLiving Properties Inc., and a development division under another subsidiary of Group Inc., a company named Port Capital Development Inc. ("**Development Inc.**"). The development division of the Port Capital Group's business is directly or indirectly owned through Development Inc. These consist of projects under active development and properties that are being held for future development.

12. Each of the development projects is typically carried out through a project specific limited partnership, with initial equity funding provided by the limited partners (who are mostly at arm's length to Port Capital Group), and subsequent equity funding provided by Development Inc. on an as-needed basis to meet development milestones or bridge project specific financial constraints. As a result, a significant portion of Port Capital Group's debt is comprised of inter-company debt.

13. In addition to the limited partnership, each project generally has a general partner and a bare trustee, both of which corporations are owned within the Port Capital Group.

14. In the case of the Petitioners, there is no bare trustee, but the structure is otherwise the same.

15. The majority of the development projects of the Port Capital Group consist of mixed-use residential and commercial properties. For the projects completed by the Port Capital Group to date, the residential component of the developments have generally been sold to third party purchasers. The development division's primary economic interest is in earning fees for managing the development process on behalf of the limited partners. For most projects, the Port Capital Group retains all, or a portion, of the commercial component of its projects. Typically, when that occurs the ownership is transferred from the development division under Development Inc. to the investment division under PortLiving Properties Inc.

*Port Capital Development Inc. (i.e. Development Inc.)*

16. Development Inc. is wholly owned by Group Inc. As noted above, Development Inc. owns, directly or indirectly, all of the Port Capital Group's interest in development projects.

17. Development Inc. is a guarantor to much of the indebtedness of the Port Capital Group owing in respect of individual project specific limited partnerships.

## FINANCIAL STATEMENTS

18. Attached hereto and marked as **Exhibit "A"** to this Affidavit, is a true copy of the unaudited balance sheet prepared for Evergreen LP, as of December 31, 2019 (the "**Balance Sheet**"). The Balance Sheet is in draft form and no updated version is available at this time. The draft Balance Sheet is potentially incomplete in the sense that there may be inter-company accounts payable that have not yet been incorporated in the document.

19. No separate financial statements have been prepared for the GP.

## CASH-FLOW STATEMENTS

20. The management of the Port Capital Group, with the assistance of the proposed Monitor, EY, has prepared cash flow projections for the period from May 22, 2020 ending August 21, 2020 during the anticipated restructuring of the Petitioners (the "**Cash-Flow Statement**"). Attached hereto and marked as **Exhibit "B"** to this Affidavit is a true copy of the Cash-Flow Statement.

21. Regarding the Cash-Flow Statement:

(a) the hypothetical assumptions are reasonable and consistent with the purpose of the projections described in the notes to the Cash-Flow Statement, and the probable assumptions are suitably supported and consistent with the plans of the Petitioners and provide a reasonable basis for the projections. All such assumptions are disclosed in the notes to the Cash-Flow Statement;

(b) since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material; and

(c) the projections have been prepared solely for the purpose described in the notes to the Cash-Flow Statement, using the probable and hypothetical assumptions set out in the notes. Consequently, readers are cautioned that it may not be appropriate for other purposes.

## CAUSE OF FINANCIAL DIFFICULTIES AND NEED TO RESTRUCTURE

22. The Petitioners are undercapitalized in terms of equity and as a result, are unable to meet their obligation to fund any cost overruns on the Terrace House Property project. The construction lender has determined that there are cost overruns that Evergreen LP is responsible to fund, for which funds are not currently available.

23. Also the Port Capital Group has been unable to advance funds such that the Petitioners have not been able to pay interest due to their construction lender.

24. As a result of all these circumstances, the Petitioners' construction lender has stopped advancing under the construction lending facility.

25. The financial difficulties of the Petitioners, and the Port Capital Group generally, are attributable to a number of factors, which were compounded by the widespread business closures as a result of the COVID-19 global pandemic. The uncertain financial impact of the current COVID-19 pandemic has resulted in potential investors withdrawing their interest in investing in the Port Capital Group's ongoing projects, and has made it more difficult for the Port Capital Group to attract new investors.

26. The primary cause of the liquidity crisis is that the projects being managed by Development Inc. are undercapitalized in terms of equity, and absent further contributions of equity by the existing limited partners or the addition of new equity partners contributing capital, other entities within the Port Capital Group have had to make up the equity shortfall by way of unsecured intercorporate advances and accrual of fees otherwise payable by the development limited

partnerships in order to continue the construction and development processes currently underway. This, in turn has led to friction between the Port Capital Group and certain of its lenders, which has resulted in these lenders showing less flexibility in the negotiation or re-negotiation of existing credit facilities extended to the Port Capital Group.

## STAKEHOLDERS

### *Unsecured Creditors*

27. The unsecured creditors of the Petitioners primarily consist of:

    (a) unsecured trade creditors;

    (b) property taxes;

    (c) professional services firms including law and accounting firms;

    (d) consultants; and

    (e) inter-company indebtedness.

28. The unsecured creditors of the Petitioners are owed approximately $8 million.

29. These debts are subordinate to the secured creditors of the Petitioners. I believe that a restructuring with the assistance of the proposed Monitor under the CCAA is much more likely to result in an outcome that will allow the unsecured creditors of the Petitioners to realize a return on their debt, as opposed to an uncontrolled liquidation or independent foreclosures of the Petitioners.

### *Investors*

30. Evergreen LP is owned by a number of investors who subscribed for limited partnership units. They are at arm's length to the Port Capital Group.

### *Secured Creditors*

31. The secured creditors of the Petitioners are CMLS Financial Ltd and Aviva Insurance Company of Canada ("**Aviva**"), as identified in the Entity Summaries for Evergreen LP and its GP attached collectively as **Exhibit "C"** to this Affidavit. I have reviewed these summaries and do verily believe these summaries to be accurate. However, given the condensed time frame in which

these materials were prepared, there may be errors, however I do not believe these errors, if any, are material. The cumulative secured debt of the Petitioners is approximately $34.8 million (including approximately $14.7 million owing pursuant to Aviva's insurance deposit facility).

32. I do believe that the secured creditors of the Petitioners have sufficient security and will not suffer a shortfall if the Petitioners are permitted an opportunity to restructure.

## INTERCORPORATE INDEBTEDNESS AND GUARANTEES

33. Based on what appeared in the general ledgers of the Port Capital Group as at February 29, 2020, the intercompany indebtedness owed by Evergreen LP to Development Inc. is approximately $3.9 million. The Port Capital Group's ledgers have not been audited or reconciled, and there may be additional inter-company transactions and amounts owed by Developments Inc., or to Developments Inc. by Evergreen LP.

34. As indicated in the Entity Summaries attached as Exhibit C to this Affidavit, Development Inc. and I are covenantors on the Petitioners' first mortgage and guarantors of the Petitioners' second mortgage in favour of the project's deposit insurer. Development Inc. and I are also covenantors, or guarantors, to most credit facilities advanced to the Port Capital Group's various project specific limited partnerships and general partners. If there were enforcement proceedings brought against me and/or Development Inc. on account of the Petitioners' mortgages, that event would trigger defaults under a large number of other loans within the Port Capital Group, with an aggregate balance of over $400 million.

## DEMANDS FOR REPAYMENT OF LOAN

35. On May 12, 2020, CMLS Financial Ltd. made demand and issued a Notice of Intention to Enforce Security in respect of the indebtedness of approximately $20,128,000 million owing on its loan, secured, among other things, by a first ranking mortgage against the Terrace House Property. The indebtedness owing to CMLS Financial Ltd. remains outstanding as the Petitioners do not have the funds to repay the indebtedness.

## ANTICIPATED RESTRUCTURING

36. The Petitioners have been in negotiations with their secured lenders regarding potential forbearance agreements and with potential investors regarding an equity investment in the overall Port Capital Group, including the Terrace House Property.

37. So far none of these discussions has resulted in an agreement capable of execution that would be beneficial to the stakeholders generally, but the discussions are ongoing.

38. The terms and structure of the Petitioners' restructuring will be finalized with the assistance of EY, as Monitor, if the relief sought by the Petitioners pursuant to the CCAA is granted by this Honourable Court. However, a proposed restructuring will likely involve:

(a) obtaining an equity investment to recapitalize the Petitioners generally, but if that proves not to be possible:

   (i) making cash calls on existing limited partners to increase the equity capital available;

   (ii) replacing existing limited partners with new ones able and willing to contribute additional capital; and/or

   (iii) selling further limited partnership units to new equity investors; and

(b) liquidating assets in an orderly way that deals with the impact of intercorporate debt and intercorporate guarantees.

39. The Petitioners are applying for relief under the CCAA because they require, among other things, the stay of proceedings sought in order to preserve the status quo and stay the actions of its creditors, so that the Petitioners may continue to operate its businesses and explore restructuring opportunities.

## CONSENT OF THE PROPOSED MONITOR

40. EY has consented to be appointed monitor in these proceedings. Attached hereto and marked as **Exhibit "D" to** this Affidavit is a true copy of EY's consent to act.

## ADMINISTRATION CHARGE

41. It is contemplated that the proposed Monitor, counsel for the proposed Monitor and counsel to the Petitioners would be granted a first priority Court-ordered charge on the assets, property and undertaking of the Petitioners, in priority to all claims, up to the maximum amount of $250,000 in respect of their respective fees and disbursements, incurred at standard rates and charges (the "**Administration Charge**").

42. I believe that the Administration Charge is necessary to ensure these professionals' continued assistance.

## INTERIM LENDING FACILITY

43. The Cash-flow Statement contemplates that the Petitioners will requires interim financing in order to facilitate an efficient and orderly restructuring. The Petitioners are working with the proposed Monitor, EY, to identify a lender to provide debtor-in-possession financing in the approximate principal amount of $1 million (the "**DIP Facility**").

44. I am advised by EY that it is expected the terms of the DIP Facility will require that any funds advanced be secured by a second-ranking charge (subordinate only to the proposed Administration Charge) secured against the property of the Petitioners in accordance with the terms of the Initial Order (the "**DIP Facility Charge**").

45. The DIP Facility and the DIP Facility Charge are necessary to facilitate the restructuring activities of the Petitioners in these CCAA proceedings, as access to the funds proposed to be advanced under the contemplated DIP Facility would enhance the prospect of a viable compromise or arrangement being made in respect of the Petitioners.

## CONCLUSION

46. The Petitioners are currently unable to meet their obligations as they come due, including amounts owing to their secured creditors and unsecured creditors.

47. The Petitioners are seeking a stay of proceedings and additional and other relief under the CCAA in order to maintain the status quo and provide the Petitioners with the much needed breathing room to explore restructuring opportunities with the assistance of the Monitor.

48. For the reasons outlined in this Affidavit, I believe that this CCAA proceeding is the best means of maximizing the recovery to the Petitioner's creditors and stakeholders.

| | | |
|---|---|---|
| AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia this 18th day of May, 2020 | ) | |
| A Commissioner for Taking Affidavits in and for British Columbia | ) | **MACARIO (TOBI) REYES** |

ALEXANDRA
Barrister &
BENNETT JONES
2500 PARK PLACE - 666 BURRARD STREET
VANCOUVER, B.C.
TEL: 604.891.5154 FAX: 604.891.5100

This is **Exhibit** "A" referred to in the Affidavit of Macario (Tobi) Reyes affirmed before me at Vancouver on this 18 day of May 2020.

A Commissioner for taking Affidavits within British Columbia

## Balance Sheet as of December 31 2019

| | | |
|---|---|---|
| Cash | $ | (22,746.10) |
| Restricted Cash | $ | 639,867.56 |
| Intercompany Transaction | $ | 2,332,028.22 |
| Funds receivable from next draw | $ | 1,550,338.00 |
| contra - refundable to PCD from draw advance | $ | (774,566.28) |
| PUD (including land Lift) | $ | 60,979,102.33 |
| PUD Overage | $ | 5,025,431.67 |
| Total Assets | $ | 69,729,455.40 |
| | | |
| Account Payables | $ | (3,570,922.84) |
| Construction Holdback | $ | (468,040.80) |
| GST | $ | 41,331.91 |
| Debt | $ | (34,206,392.00) |
| Total Debt | $ | (38,204,023.73) |
| | | |
| Internal Equity | $ | (207,100.00) |
| External Equity | $ | (12,757,737.00) |
| Additional Equity required by Bank | $ | (3,207,000.00) |
| Remaining Additional Equity Required | $ | (328,163.00) |
| Additional Equity required for overages | $ | (5,025,431.67) |
| Land Lift | $ | (10,000,000.00) |
| Total equity | $ | (31,525,431.67) |
| | | |
| Balance check | -$ | 0.00 |

This is **Exhibit "13"** referred to in the Affidavit of Macario (Tobi) Reyes affirmed before me at Vancouver on this 18 day of May 2020.

A Commissioner for taking Affidavits within British Columbia

In the matter of the CCAA of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership
Weekly Cash Flow Projection for the Period May 22, 2020 to August 21, 2020
$CAD

| | Week Ending | 1<br>29-May-20<br>Forecast | 2<br>5-Jun-20<br>Forecast | 3<br>12-Jun-20<br>Forecast | 4<br>19-Jun-20<br>Forecast | 5<br>26-Jun-20<br>Forecast | 6<br>3-Jul-20<br>Forecast | 7<br>10-Jul-20<br>Forecast | 8<br>17-Jul-20<br>Forecast | 9<br>24-Jul-20<br>Forecast | 10<br>31-Jul-20<br>Forecast | 11<br>7-Aug-20<br>Forecast | 12<br>14-Aug-20<br>Forecast | 13<br>21-Aug-20<br>Forecast | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Receipts** | | | | | | | | | | | | | | | |
| Rent | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| **Disbursements** | | | | | | | | | | | | | | | |
| Payroll, payroll taxes and benefits | 2 | - | (17,500) | - | (17,500) | - | (17,500) | - | (17,500) | - | (17,500) | - | - | (17,500) | (105,000) |
| Insurance | 3 | - | (6,000) | - | - | - | (6,000) | - | - | - | - | (6,000) | - | - | (18,000) |
| Project / Development Costs | 4 | - | - | - | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (300,000) |
| General, admin & miscellaneous expenses | 5 | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (5,000) | (65,000) |
| Site preservation, transition and contingency | 6 | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (10,000) | (130,000) |
| Property Tax | 7 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | | (15,000) | (38,500) | (15,000) | (62,500) | (45,000) | (68,500) | (45,000) | (62,500) | (45,000) | (62,500) | (51,000) | (45,000) | (62,500) | (618,000) |
| **Restructuring Disbursements** | | | | | | | | | | | | | | | |
| Restructuring costs | 8 | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (195,000) |
| Development Management / CRO | 9 | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (15,000) | (195,000) |
| DIP interest payments | | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (30,000) | (390,000) |
| **Net Cash Flow** | | (45,000) | (68,500) | (45,000) | (92,500) | (75,000) | (98,500) | (75,000) | (92,500) | (75,000) | (92,500) | (81,000) | (75,000) | (92,500) | (1,008,000) |
| **Cash Balance** | | | | | | | | | | | | | | | |
| **Opening Available Cash Balance** | | - | 5,000 | 11,500 | 16,500 | (1,000) | (1,000) | 500 | 500 | (17,000) | (17,000) | (34,500) | (35,500) | (35,500) | - |
| Net Cash Flow | | (45,000) | (68,500) | (45,000) | (92,500) | (75,000) | (98,500) | (75,000) | (92,500) | (75,000) | (92,500) | (81,000) | (75,000) | (92,500) | (1,008,000) |
| DIP Draw/(Payback) | | 50,000 | 75,000 | 50,000 | 75,000 | 75,000 | 100,000 | 75,000 | 75,000 | 75,000 | 75,000 | 80,000 | 75,000 | 135,000 | 1,015,000 |
| **Closing Available Cash Balance** | | 5,000 | 11,500 | 16,500 | (1,000) | (1,000) | 500 | 500 | (17,000) | (17,000) | (34,500) | (35,500) | (35,500) | 7,000 | 7,000 |
| **DIP Balance** | | | | | | | | | | | | | | | |
| Opening Balance | | - | 50,000 | 125,000 | 175,000 | 250,000 | 325,000 | 425,000 | 500,000 | 575,000 | 650,000 | 725,000 | 805,000 | 880,000 | - |
| Draw/(Payback) | 10 | 50,000 | 75,000 | 50,000 | 75,000 | 75,000 | 100,000 | 75,000 | 75,000 | 75,000 | 75,000 | 80,000 | 75,000 | 135,000 | 1,015,000 |
| Interest | | | | | | | | | | | | | | | - |
| **DIP Balance** | | 50,000 | 125,000 | 175,000 | 250,000 | 325,000 | 425,000 | 500,000 | 575,000 | 650,000 | 725,000 | 805,000 | 880,000 | 1,015,000 | 1,015,000 |

See attached disclaimer

**In the Matter of CCAA of the Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (the "Petitioners")**

**Notes to the Unaudited Cash Flow Forecast of the Petitioners**

**Disclaimer:**

In preparing this cash flow forecast (the "**Cash Flow Forecast**"), the Petitioners have relied upon unaudited financial information and the Petitioners have not attempted to further verify the accuracy or completeness of such information. The Cash Flow Forecast includes estimates concerning the operations of the Petitioners and additional assumptions discussed below with respect to the requirements and impact of a Companies' Creditor Arrangement Act ("**CCAA**") filing. Since the Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary from the Cash Flow Forecast, even if the assumptions materialize, and such variation may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Cash Flow Forecast includes the receipts and disbursements of all the Petitioners during the Cash Flow Forecast Period (the "**Period**"). The Petitioners, with the assistance of Ernst & Young Inc., in its capacity as the proposed monitor of the Petitioners (the "**Proposed Monitor**" and if appointed, the "**Monitor**"), have prepared the Cash Flow Forecast based primarily on estimated receipts and disbursements related to the CCAA proceedings and the ongoing construction project (Terrace House).

The Cash Flow Forecast assumes that the Petitioners file for protection under the CCAA on May 21, 2020. The Cash Flow Forecast covers the period from May 22, 2020 to August 21, 2020 (the "**Period**").

1. **Receipts**: No receipts are forecasted over the Period. Certain receipts for items including GST refunds may be received over the Period but are not accounted for in the Cash Flow Forecast.

2. **Payroll:** Represents the bi-monthly payroll for salaried personnel required for the project.

3. **Insurance:** Amount has been estimated based on historical run rates.

4. **Project / Development Costs:** Represents management's estimates of required cash outlays during the Period to fund developments fees, consultant costs and other development and critical construction costs. No amount has been forecasted for payment in the first 21 days pending a review of costs by the Monitor and consultation with various affected stakeholders.

5. **General Administration Costs**: includes site security, equipment repairs & maintenance, office expenses and other miscellaneous items. These have been estimated based on historical run rates.

6. **Site Preservation, Transition and Contingency:** represents an estimate of costs associated with site preservations, transition of management of the Project to the Purchaser, and a general reserve for items that may arise in an insolvency proceeding.

7. **Property Taxes Payable**: The Cash Flow Forecast assumes that property taxes will be stayed pending further Order of the Court.

8. **Restructuring Costs**: Represents professional fee payments to counsel to the Petitioners, the Monitor and the Monitor's counsel.

9. **Development Management / CRO costs**: Represents estimates for a CRO proposed to be retained by the Petitioners as well as an outside Development Management firm.

10. **DIP Draw/(Payback):** represents projected DIP draws (repayments, if any) to fund corporation disbursements, restructuring costs and others. For the purpose of this Cash Flow Forecast, interest accrued on the DIP has not been included.

This is **Exhibit** "C" referred to in the Affidavit of Macario (Tobi) Reyes affirmed before me at Vancouver on this 18 day of May 2020.

A Commissioner for taking Affidavits within British Columbia

**ENTITY SUMMARY**

**ENTITY NAME: PORT CAPITAL DEVELOPMENT (EV) INC.**

## A. Real Estate Holdings

(a) **Property:1250 Hastings Street West, Vancouver, BC V6E 2M4;**
**PID:** 006-721-397 Lot 18, Except that part of the Canadian Pacific Railway Right-of-Way as described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92

(b) **Registered Owner:** Port Capital Development (EV) Inc.

(c) **Beneficial Owner:** Evergreen House Development Limited Partnership.

(d) **Registered Encumbrances:** British Columbia Land Title Office search evidences the following financial encumbrances:

| **Registration No.** | **Encumbrance Holder** | **Encumbrance** | **Registration Date** |
|---|---|---|---|
| CA6395613 | Aviva Insurance Company of Canada | Mortgage | October 25, 2017 |
| CA6395614 | Aviva Insurance Company of Canada | Assignment of Rents | October 25, 2017 |
| CA7337616 | CMLS Financial Ltd. | Mortgage | February 6, 2019 |
| CA7337617 | CMLS Financial Ltd. | Assignment of Rents | February 6, 2019 |
| CA8047964 | AR-Con Holdings Ltd. | Claim of Builders Lien | February 21, 2020 |

| Registration No. | Encumbrance Holder | Encumbrance | Registration Date |
|---|---|---|---|
| CA8140760 | Urban One Builders CM Inc. | Claim of Builders Lien | April 15, 2020 |
| CA8148543 | Matakana Scaffolding B.C. Ltd | Claim of Builders Lien | April 21, 2020 |
| CA8154113 | Francl Architecture Inc. | Claim of Builders Lien | April 23, 2020 |
| CA8155198 | Doka Canada Ltd./Ltee | Claim of Builders Lien | April 24, 2020 |
| CA8170195 | | Claim of Builders Lien | PENDING |
| WX2147027 | | Claim of Builders Lien | PENDING |

## B. Personal Property Registry Encumbrances

*Personal Property Security Act* (British Columbia) search evidences the following results:

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| **PORT CAPITAL DEVELOPMENT (EV) INC.** and Evergreen House | AVIVA INSURANCE COMPANY OF CANADA | 352464K | OCT 23, 2017 | OCT 23, 2022 | ALL PRESENTLY OWNED AND HEREAFTER ACQUIRED RIGHT, TITLE AND INTEREST OF ONE OR MORE OF THE DEBTORS IN AND TO ALL GOODS |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| Development Limited Partnership | | | | | (INCLUDING ALL ACCESSORIES, ATTACHMENTS, ADDITIONS AND ACCESSIONS THERETO), CHATTEL PAPER, DOCUMENTS OF TITLE (WHETHER NEGOTIABLE OR NOT), INSTRUMENTS, INTANGIBLES, LICENCES, MONEY AND INVESTMENT PROPERTY NOW OR HEREAFTER SITUATE UPON, AFFIXED TO, USED IN CONNECTION WITH, PERTAINING TO OR ARISING OUT OF THOSE LANDS AND PREMISES LOCATED AT 1250 WEST HASTINGS STREET, VANCOUVER, BRITISH COLUMBIA, KNOWN AS "TERRACE HOUSE" AND LEGALLY DESCRIBED AS PID: 006-721-397, LOT 18 EXCEPT THAT PART OF CANADIAN PACIFIC RAILWAY RIGHT OF WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, & EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92.<br>.<br>PROCEEDS: ANY AND ALL "GOODS", "INTANGIBLES", "CHATTEL PAPER", "DOCUMENTS OF TITLE", "INSTRUMENTS", "MONEY" AND "INVESTMENT PROPERTY" (AS SUCH TERMS ARE DESCRIBED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA) AS AMENDED OR REPLACED FROM TIME TO TIME) CONSTITUTING PROCEEDS OF ANY OR ALL OF THE FOREGOING COLLATERAL, INCLUDING PROCEEDS OF PROCEEDS. |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | *SUBORDINATION AGREEMENT IN FAVOUR OF CMLS FINANCIAL LTD. AND SECURITY AGREEMENT REGISTERED ON FEBRUARY 5, 2019 AS BASE REGISTRATION NO. 303506L. |
| EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP and **Port Capital Development (EV) Inc.** | CMLS FINANCIAL LTD. | 303506L | FEB 05, 2019 | FEB 05, 2022 | ALL OF THE PRESENT AND AFTER ACQUIRED GOODS, INVESTMENT PROPERTY, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES AND MONEY OF EACH OF THE DEBTORS OF WHATSOEVER NATURE OR KIND WHICH ARE NOW OR HEREAFTER ATTACHED TO, LOCATED ON, OR ARISING FROM OR USED OR PURCHASED FOR USE IN CONNECTION WITH, THE LANDS AND PREMISES LOCATED AT 1250 WEST HASTINGS STREET, VANCOUVER, BRITISH COLUMBIA AND LEGALLY DESCRIBED AS PARCEL IDENTIFIER: 006-721-397 LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN THE ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92 (THE "LANDS"), OR ANY BUILDINGS ON OR OTHER IMPROVEMENTS TO THE LANDS (THE "IMPROVEMENTS"), OR OTHERWISE RELATING TO THE LANDS OR THE IMPROVEMENTS OR THE FURNISHING, OPERATING, LEASING OR SALE OF THE LANDS OR THE IMPROVEMENTS, AND ALL PROCEEDS AND RENEWALS THEREOF AND THEREFROM, ACCRETIONS THERETO AND SUBSTITUTIONS THEREFOR, INCLUDING, |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | WITHOUT LIMITATION, ALL OF THE FOLLOWING NOW OWNED OR HEREAFTER OWNED OR ACQUIRED BY OR ON BEHALF OF ANY OF THE DEBTORS WHICH IS SO ATTACHED, LOCATED, ARISING FROM, USED, PURCHASED OR RELATED TO THE LANDS OR THE IMPROVEMENTS OR ANY PART THEREOF: ALL DEBTS, ACCOUNTS, CLAIMS AND CHOSES IN ACTION INCLUDING ALL SALES PROCEEDS, DEPOSITS AND OTHER MONEY; ALL INVENTORY; ALL EQUIPMENT (OTHER THAN INVENTORY), INCLUDING ALL CHATTELS, FIXTURES, FURNITURE, FURNISHINGS, MACHINERY, MOTOR VEHICLES, PLANT, TOOLS AND OTHER TANGIBLE PERSONAL PROPERTY; ALL PLANS, SPECIFICATIONS, DRAWINGS, AGREEMENTS, BONDS, CONTRACTS AND OTHER INSTRUMENTS, AND ALL CLAIMS, WARRANTIES, GUARANTEES, AND INDEMNITIES WITH RESPECT THERETO; ALL CERTIFICATES OF OCCUPANCY, FRANCHISES, LICENCES AND PERMITS ISSUED BY ANY GOVERNMENTAL AUTHORITY; THE PROCEEDS OF THE CONVERSION OF ANY OR ALL OF THE LANDS, THE IMPROVEMENTS AND THE EQUIPMENT INTO CASH OR LIQUIDATED CLAIMS, INCLUDING THE PROCEEDS OF ANY INSURANCE OR EXPROPRIATION AWARDS; ALL CASH, INVESTMENT PROPERTY AND ASSETS THAT MAY AT ANY TIME BE DEPOSITED WITH OR HELD BY THE SECURED PARTY; AND ALL PAPERS, BOOKS OF ACCOUNT AND OTHER DOCUMENTS AND RECORDS IN ANY FORM EVIDENCING OR RELATING TO |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | ANY OF THE FOREGOING COLLATERAL. ALL PROCEEDS OF THE FOREGOING COLLATERAL INCLUDING ALL ACCOUNTS, CHATTEL PAPER, CROPS, DOCUMENTS OF TITLE, EQUIPMENT, FIXTURES, GOODS, INSTRUMENTS, INTANGIBLES AND INVESTMENT PROPERTY. TERMS USED IN THIS GENERAL COLLATERAL DESCRIPTION WHICH ARE DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF BRITISH COLUMBIA (THE "PPSA") HAVE THE SAME MEANINGS AS SET FORTH IN THE PPSA UNLESS THEY ARE OTHERWISE DEFINED HEREIN. |
| URBAN ONE BUILDERS CM INC. and Evergreen House Development Limited Partnership and **Port Capital Development (EV) Inc.** | ALLIED CRANE LTD. | 089519M | FEB 28, 2020 | FEB 28, 2022 | JASO TOWER CRANE, MODEL: J180LPA, SERIAL NUMBER: 0142; LEASED BY THE SECURED PARTY TO THE DEBTORS FROM TIME TO TIME, TOGETHER WITH MANUFACTURING WARRANTIES RELATING TO THE ABOVE DESCRIBED COLLATERAL AND ALL ATTACHMENTS, ACCESSIONS, APPURTENANCES, ACCESSORIES, PARTS, SUBSTITUTIONS AND REPLACEMENTS THERETO AND THEREFROM AND ALL IDENTIFIABLE OR TRACEABLE PERSONAL PROPERTY IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH SUCH COLLATERAL OR PROCEEDS THEREFROM INCLUDING ALL GOODS, SECURITIES, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES AND MONEY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF B.C.) AND ALL RIGHTS TO ANY INSURANCE PAYMENT OR ANY OTHER PAYMENT AS INDEMNITY |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | OR COMPENSATION FOR LOSS OF, OR DAMAGE TO SUCH COLLATERAL OR THE<br>PROCEEDS THEREFROM AND ANY LEASES, CHARTERS OR OTHER ARRANGEMENT<br>THE DEBTORS MAY ENTER INTO WITH ANY THIRD PARTY IN RESPECT OF ANY<br>SUCH COLLATERAL OR PROCEEDS AND ALL RIGHTS, INTEREST, BENEFIT, RENTS,<br>PROFITS, MONIES AND PROCEEDS BOTH PRESENT AND FUTURE, OF THE DEBTORS<br>RELATED THERETO. |

## C. Other Search Results

*Bank Act* (Canada) registered in the province of British Columbia revealed nil results.

## D. Secured liabilities

**1. Construction loan in relation to 1250 West Hastings Street, Vancouver (the "Property") – Commitment letter dated July 4, 2018**

a) **Borrower**: Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership

b) **Covenantors:** Port Capital Development Inc. and Macario Teodoro Reyes

c) **Creditor:** CMLS Financial Ltd.

d) **Principal amount:** $70,000,000.00 non-revolving floating rate demand loan

e) **Interest:** Prime (CIBC) + 2.25% per annum, compounded monthly. Upon satisfaction of the applicable conditions precedent and the funding of the first construction advance, the rate shall be reduced to prime + 2% per annum, compounding monthly.

f) **Maturity Date:** January 30, 2021

g) **Security (inter alia):**

i. $80,000,000 mortgage creating a first fixed financial charge over all of the legal and beneficial interest in the Property.

ii. First ranking assignment of rents for the Project (defined below).

iii. General security agreement creating a first fixed security interest over all present and after-acquired personal property of the Borrower with respect to the Project.

iv. Unconditional joint and several guarantees for the full amount of the Loan from the Covenantors.

v. Cost overrun and completion guarantee from the Borrower and the Covenantors.

vi. Beneficiary authorization and charge agreement from Evergreen House Development Limited Partnership.

h) **Miscellaneous Notes:** The purpose of the Loan is to assist in financing the development of a 19-story, 20-unit luxury residential strata building, plus 1 main floor commercial strata unit with 3 levels of underground parking (the "**Project**"). As at May 12, 2020, the amount of indebtedness owing under this credit facility was approximately $20,128,000.

**2. Deposit Protection Facility for 19-storey concrete and timber residential condominium building (the "Project") located at 1250 Hastings Street, Vancouver (the "Property") – Letter agreement dated October 13, 2017, as amended by a letter agreement dated January 4, 2019**

a) **Principal**: Evergreen House Development Limited Partnership, by its general partner, Port Capital Development (EV) Inc.

b) **Indemnitors**: Port Capital Development Inc., Evergreen House Development Limited Partnership and Macario (Tobi) Reyes

c) **Insurer:** Aviva Insurance Company of Canada

d) **Deposit Protection Facility:** $32,000,000

e) **Premium:** 0.9% annually

f) **Term:** N/A

g) **Security (inter alia):**

i. Unlimited joint and several indemnities from the Principal and the Indemnitors.

ii. Collateral third mortgage behind existing land lenders, Terra Fund Financial Inc. and Peterson Investment Group Inc., in the amount of $32,000,000.00 on the Property, which will then become a collateral second mortgage behind the construction lender for the Project, CMLS Financial Ltd.

**H) Miscellaneous Notes:** The purpose of the facility is to enable the release of residential deposits from trust so that they may be used as a source of project financing.

## ENTITY SUMMARY

## ENTITY NAME: EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

### A. Real Estate Holdings

(a) **Property:1250 Hastings Street West, Vancouver, BC V6E 2M4; PID:** 006-721-397 Lot 18, Except that part of the Canadian Pacific Railway Right-of-Way as described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92

(b) **Registered Owner:** Port Capital Development (EV) Inc.

(c) **Beneficial Owner:** Evergreen House Development Limited Partnership

(d) **Registered Encumbrances:** See Entity Summary for Port Capital Development (EV) Inc.

### B. Personal Property Registry Encumbrances

*Personal Property Security Act* (British Columbia) search evidences the following results:

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| PORT CAPITAL DEVELOPMENT (EV) INC. and **Evergreen House Development Limited Partnership** | AVIVA INSURANCE COMPANY OF CANADA | 352464K | OCT 23, 2017 | OCT 23, 2022 | ALL PRESENTLY OWNED AND HEREAFTER ACQUIRED RIGHT, TITLE AND INTEREST OF ONE OR MORE OF THE DEBTORS IN AND TO ALL GOODS (INCLUDING ALL ACCESSORIES, ATTACHMENTS, ADDITIONS AND ACCESSIONS THERETO), CHATTEL PAPER, DOCUMENTS OF TITLE (WHETHER NEGOTIABLE OR NOT), INSTRUMENTS, INTANGIBLES, LICENCES, MONEY AND INVESTMENT PROPERTY NOW OR HEREAFTER SITUATE UPON, AFFIXED TO, USED IN CONNECTION WITH, PERTAINING |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | TO OR ARISING OUT OF THOSE LANDS AND PREMISES LOCATED AT 1250<br>WEST HASTINGS STREET, VANCOUVER, BRITISH COLUMBIA, KNOWN AS<br>"TERRACE HOUSE" AND LEGALLY DESCRIBED AS PID: 006-721-397, LOT 18<br>EXCEPT THAT PART OF CANADIAN PACIFIC RAILWAY RIGHT OF WAY AS<br>DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO.<br>1154C, & EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT<br>185 PLAN 92.<br>.<br>PROCEEDS: ANY AND ALL "GOODS", "INTANGIBLES", "CHATTEL PAPER",<br>"DOCUMENTS OF TITLE", "INSTRUMENTS", "MONEY" AND "INVESTMENT<br>PROPERTY" (AS SUCH TERMS ARE DESCRIBED IN THE PERSONAL<br>PROPERTY SECURITY ACT (BRITISH COLUMBIA) AS AMENDED OR<br>REPLACED FROM TIME TO TIME) CONSTITUTING PROCEEDS OF ANY OR<br>ALL OF THE FOREGOING COLLATERAL, INCLUDING PROCEEDS OF PROCEEDS.<br><br>*SUBORDINATION AGREEMENT IN FAVOUR OF CMLS FINANCIAL LTD. AND SECURITY AGREEMENT REGISTERED ON FEBRUARY 5, 2019<br>AS BASE REGISTRATION NO. 303506L. |
| **EVERGREEN HOUSE DEVELOPMENT LIMITED** | CMLS FINANCIAL LTD. | 303506L | FEB 05, 2019 | FEB 05, 2022 | ALL OF THE PRESENT AND AFTER ACQUIRED GOODS, INVESTMENT PROPERTY,<br>INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES AND MONEY |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| **PARTNERSHIP** and Port Capital Development (EY) Inc. | | | | | OF EACH OF THE DEBTORS OF WHATSOEVER NATURE OR KIND WHICH ARE NOW OR<br>HEREAFTER ATTACHED TO, LOCATED ON, OR ARISING FROM OR USED OR<br>PURCHASED FOR USE IN CONNECTION WITH, THE LANDS AND PREMISES LOCATED<br>AT 1250 WEST HASTINGS STREET, VANCOUVER, BRITISH COLUMBIA AND LEGALLY<br>DESCRIBED AS PARCEL IDENTIFIER: 006-721-397 LOT 18, EXCEPT THAT PART<br>OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN THE<br>ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT<br>THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92 (THE<br>"LANDS"), OR ANY BUILDINGS ON OR OTHER IMPROVEMENTS TO THE LANDS (THE<br>"IMPROVEMENTS"), OR OTHERWISE RELATING TO THE LANDS OR THE<br>IMPROVEMENTS OR THE FURNISHING, OPERATING, LEASING OR SALE OF THE<br>LANDS OR THE IMPROVEMENTS, AND ALL PROCEEDS AND RENEWALS THEREOF AND<br>THEREFROM, ACCRETIONS THERETO AND SUBSTITUTIONS THEREFOR, INCLUDING,<br><br>WITHOUT LIMITATION, ALL OF THE FOLLOWING NOW OWNED OR HEREAFTER OWNED<br>OR ACQUIRED BY OR ON BEHALF OF ANY OF THE DEBTORS WHICH IS SO<br>ATTACHED, LOCATED, ARISING FROM, USED, PURCHASED OR RELATED TO THE<br>LANDS OR THE IMPROVEMENTS OR ANY PART THEREOF: ALL DEBTS, ACCOUNTS,<br>CLAIMS AND CHOSES IN ACTION INCLUDING ALL SALES PROCEEDS, DEPOSITS AND |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | OTHER MONEY; ALL INVENTORY; ALL EQUIPMENT (OTHER THAN INVENTORY),<br>INCLUDING ALL CHATTELS, FIXTURES, FURNITURE, FURNISHINGS, MACHINERY,<br>MOTOR VEHICLES, PLANT, TOOLS AND OTHER TANGIBLE PERSONAL PROPERTY; ALL<br>PLANS, SPECIFICATIONS, DRAWINGS, AGREEMENTS, BONDS, CONTRACTS AND<br>OTHER INSTRUMENTS, AND ALL CLAIMS, WARRANTIES, GUARANTEES, AND<br>INDEMNITIES WITH RESPECT THERETO; ALL CERTIFICATES OF OCCUPANCY,<br>FRANCHISES, LICENCES AND PERMITS ISSUED BY ANY GOVERNMENTAL AUTHORITY;<br>THE PROCEEDS OF THE CONVERSION OF ANY OR ALL OF THE LANDS, THE<br>IMPROVEMENTS AND THE EQUIPMENT INTO CASH OR LIQUIDATED CLAIMS,<br>INCLUDING THE PROCEEDS OF ANY INSURANCE OR EXPROPRIATION AWARDS; ALL<br>CASH, INVESTMENT PROPERTY AND ASSETS THAT MAY AT ANY TIME BE DEPOSITED<br>WITH OR HELD BY THE SECURED PARTY; AND ALL PAPERS, BOOKS OF ACCOUNT<br>AND OTHER DOCUMENTS AND RECORDS IN ANY FORM EVIDENCING OR RELATING TO<br>ANY OF THE FOREGOING COLLATERAL. ALL PROCEEDS OF THE FOREGOING<br>COLLATERAL INCLUDING ALL ACCOUNTS, CHATTEL PAPER, CROPS, DOCUMENTS OF<br>TITLE, EQUIPMENT, FIXTURES, GOODS, INSTRUMENTS, INTANGIBLES AND<br>INVESTMENT PROPERTY. TERMS USED IN THIS GENERAL COLLATERAL DESCRIPTION<br>WHICH ARE DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF BRITISH |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | COLUMBIA (THE "PPSA") HAVE THE SAME MEANINGS AS SET FORTH IN THE PPSA UNLESS THEY ARE OTHERWISE DEFINED HEREIN. |
| URBAN ONE BUILDERS CM INC. and **Evergreen House Development Limited Partnership** and Port Capital Development (EV) Inc. | ALLIED CRANE LTD. | 089519M | FEB 28, 2020 | FEB 28, 2022 | JASO TOWER CRANE, MODEL: J180LPA, SERIAL NUMBER: 0142; LEASED BY THE SECURED PARTY TO THE DEBTORS FROM TIME TO TIME, TOGETHER WITH MANUFACTURING WARRANTIES RELATING TO THE ABOVE DESCRIBED COLLATERAL AND ALL ATTACHMENTS, ACCESSIONS, APPURTENANCES, ACCESSORIES, PARTS, SUBSTITUTIONS AND REPLACEMENTS THERETO AND THEREFROM AND ALL IDENTIFIABLE OR TRACEABLE PERSONAL PROPERTY IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH SUCH COLLATERAL OR PROCEEDS THEREFROM INCLUDING ALL GOODS, SECURITIES, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES AND MONEY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF B.C.) AND ALL RIGHTS TO ANY INSURANCE PAYMENT OR ANY OTHER PAYMENT AS INDEMNITY OR COMPENSATION FOR LOSS OF, OR DAMAGE TO SUCH COLLATERAL OR THE PROCEEDS THEREFROM AND ANY LEASES, CHARTERS OR OTHER ARRANGEMENT THE DEBTORS MAY ENTER INTO WITH ANY THIRD PARTY IN RESPECT OF ANY SUCH COLLATERAL OR PROCEEDS AND ALL RIGHTS, INTEREST, BENEFIT, RENTS, PROFITS, MONIES AND PROCEEDS BOTH PRESENT AND FUTURE, OF THE DEBTORS |

| Debtor(s) | Secured Party | Registration No. | Registration Date | Expiry Date | Collateral description |
|---|---|---|---|---|---|
| | | | | | RELATED THERETO. |

## C. Other Search Results

*Bank Act* (Canada) registered in the province of British Columbia revealed nil results.

## D. Secured liabilities

1. Construction loan in relation to 1250 West Hastings Street, Vancouver (the "**Property**") – Commitment letter dated July 4, 2018

   a) **Borrower**: Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership

   b) **Covenantors:** Port Capital Development Inc. and Macario Teodoro Reyes

   c) **Creditor:** CMLS Financial Ltd.

   d) **Principal amount:** $70,000,000.00 non-revolving floating rate demand loan

   e) **Interest:** Prime (CIBC) + 2.25% per annum, compounded monthly. Upon satisfaction of the applicable conditions precedent and the funding of the first construction advance, the rate shall be reduced to prime + 2% per annum, compounding monthly.

   f) **Maturity Date:** January 30, 2021

   g) **Security (inter alia):**

      i. $80,000,000 mortgage creating a first fixed financial charge over all of the legal and beneficial interest in the Property.

      ii. First ranking assignment of rents for the Project (defined below).

      iii. General security agreement creating a first fixed security interest over all present and after-acquired personal property of the Borrower with respect to the Project.

      iv. Unconditional joint and several guarantees for the full amount of the Loan from the Covenantors.

      v. Cost overrun and completion guarantee from the Borrower and the Covenantors.

      vi. Beneficiary authorization and charge agreement from Evergreen House Development Limited Partnership.

h) **Miscellaneous Notes:** The purpose of the Loan is to assist in financing the development of a 19-story, 20-unit luxury residential strata building, plus 1 main floor commercial strata unit with 3 levels of underground parking (the "**Project**"). As at May 12, 2020, the amount of indebtedness owing under this credit facility was approximately $20,128,000.

2. Deposit Protection Facility for 19-storey concrete and timber residential condominium building (the "**Project**") located at 1250 Hastings Street, Vancouver (the "**Property**") – Letter agreement dated October 13, 2017, as amended by a letter agreement dated January 4, 2019

a) **Principal**: Evergreen House Development Limited Partnership, by its general partner, Port Capital Development (EV) Inc.

b) **Indemnitors**: Port Capital Development Inc., Evergreen House Development Limited Partnership and Macario (Tobi) Reyes

c) **Insurer:** Aviva Insurance Company of Canada

d) **Deposit Protection Facility:** $32,000,000

e) **Premium:** 0.9% annually

f) **Term:** N/A

g) **Security (inter alia):**

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**H) Miscellaneous Notes:** The purpose of the facility is to enable the release of residential deposits from trust so that they may be used as a source of project financing.

This is **Exhibit** "D" referred to in the Affidavit of Macario (Tobi) Reyes affirmed before me at Vancouver on this 18 day of May 2020.

A Commissioner for taking Affidavits within British Columbia

No.________________
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

**CONSENT TO ACT**

The undersigned, Ernst & Young Inc., hereby consents to act as the court-appointed Monitor of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership pursuant to the terms of an order substantially in the form filed in the above proceeding.

DATED at Vancouver, this 18th day of May, 2020.

**ERNST & YOUNG INC.**

Per:

______________________________
**Michael A. Bell**
**Senior Vice President**

**NO. VLC-S-S205095**
**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

# <u>PROPOSED MONITOR'S REPORT</u>

**ERNST & YOUNG INC.**

**May 28, 2020**

**TABLE OF CONTENTS**
**TO THE**
**PROPOSED MONITOR'S REPORT**

## INTRODUCTION

1. Ernst & Young Inc. ("**EY**") understands that Port Capital Development (EV) Inc. (the "**General Partner**") and Evergreen House Development Limited Partnership ("**Evergreen LP**"), (each a "**Petitioner**", and collectively, the "**Petitioners**") initially filed a Petition (the "**CCAA Application**") before this Honourable Court returnable on May 21, 2020 seeking an Initial Order (the "**Proposed Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to obtain a stay of proceedings (a "**Stay**") to enable the Petitioners an opportunity to restructure their business and affairs. The Petitioners propose that EY be appointed as Monitor of the Petitioners in these CCAA proceedings (in such capacity, the "**Proposed Monitor**").

2. On May 21, 2020, the Petitioners and their Secured Creditors (defined below) sought an adjournment of the CCAA Application to May 29, 2020 to, if possible, work towards a consensual CCAA which balanced the interests of the Petitioners on and their Secured Creditors.

3. Since May 21, 2020, legal counsel the Petitioners and each of the Secured Creditors as well as the Proposed Monitor have consulted on a path forward for a consensual CCAA; and the Proposed Monitor is of the view that a compromise has been achieved that allows for, *inter alia*, the immediate commencement of a Proposed SISP (defined below) subject to the approval of this Honourable Court. The Proposed SISP is attached as a schedule to the Proposed Initial Order.

4. This report (the "**Report**") has been prepared by the Proposed Monitor prior to its appointment as Monitor, should this Court grant the Proposed Initial Order, to provide information to this Court for its consideration in respect of the Petitioners' CCAA Application.

## PURPOSE

5. Capitalized terms used but not defined in this Report are defined in the Affidavit of Mr. Macario (Tobi) Reyes (the "**Reyes Affidavit**") sworn May 18, 2020, the Proposed Initial Order and the Proposed SISP.

6. The purpose of this Report is to provide information to this Honourable Court with respect to:

   a) EY's qualifications to act as Monitor;

   b) an overview of the Petitioners;

   c) overview of the Petitioners' thirteen (13) week cash flow forecast on a consolidated basis for all the Petitioners (the "**Cash Flow Forecast**");

   d) an overview of the assets and liabilities of the Petitioners;

   e) the proposed enhanced powers of the Proposed Monitor;

   f) the proposed sale and investment solicitation process (the "**Proposed SISP**"); and

   g) certain relevant matters about the relief sought in the Proposed Initial Order.

## TERMS OF REFERENCE

7. In preparing this Report and making the comments herein, the Proposed Monitor has been provided with, has herein relied upon, unaudited financial information, books, records and financial information prepared by the Petitioners, discussions with management of the Petitioners ("**Management**"), and information from other third party sources (collectively, the "**Information**"). Except as described in this Report in respect of the Cash Flow Forecast:

   a) the Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

b) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

8. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not readily and currently ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be material.

9. Unless otherwise indicated, the Proposed Monitor's understanding of factual matters expressed in this Report concerning the Petitioners and their business is based on the Information, and not independent factual determinations made by the Proposed Monitor.

10. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian Dollars.

**QUALIFICATIONS OF EY TO ACT AS MONITOR**

11. EY is a licensed trustee within the meaning of subsection 2 of the *Bankruptcy and Insolvency Act* (Canada). EY is not subject to any of the restrictions set out in section 11.7(2) of the CCAA on who may be appointed as Monitor.

12. EY has consented to act as Monitor in these proceedings should this Honourable Court grant an Initial Order on the terms sought by the Petitioners. A copy of EY's consent to act as Monitor is attached to the Reyes Affidavit.

13. EY has led in-court initiatives resulting in the successful restructurings (or sale) of numerous real estate development projects in British Columbia including the **Vancouver Olympic Village**, the **Jameson House** (Vancouver), **Blackburn Developments and the Falls Golf Club and Resort** (Chilliwack), **Channel Ridge** (Salt Spring Island), the **Resort at Copper Point** (Invermere, BC), **Fairmont Resorts** (Fairmont, BC), **Wyndansea** (Ucluelet, BC), **Squamish at Ocean Point** (Squamish, BC), **Copper Sky** (Kelowna, BC), **SOPA Square** (Kelowna, BC), **Aquattro** (Colwood) and the **Oak Bay Beach Hotel** (Victoria, BC).

14. Upon its appointment, if so granted by this Honourable Court, the Proposed Monitor intends to retain Blake, Cassels & Graydon LLP ("**Blakes**") to act as its independent counsel in these CCAA proceedings.

## GENERAL BACKGROUND AND CAUSES OF INSOLVENCY

### The Port Capital Group

15. The Petitioners are subsidiaries of the "**Port Capital Group**", which is in the business of real estate development and management primarily in British Columbia, but also Toronto, Ontario. A more fulsome description of the Port Capital Group is provided in the Reyes Affidavit and is not replicated herein.

16. The Port Capital Group is divided into two divisions:

    a) an investment division organized under a subsidiary named Port Living Properties Inc.; and

b) a development division under another subsidiary named Port Capital Development Inc. ("**Development Inc.**").

17. Development Inc. indirectly owns various projects under active development and properties that are being held for future development.

18. Under Development Inc., each development project is typically carried out through a project specific limited partnership (“**LP**”). The initial equity funding is typically provided by the limited partners (who are mostly at arm's length to the Port Capital Group), and subsequent equity funding is typically provided by Development Inc., on an as-needed basis, to meet development milestones or bridge project specific financial constraints. As a result, a significant portion of Port Capital Group's debt is comprised of inter-company debt.

19. In addition to the LP, each project has a general partner and a bare trustee, both of which corporations are owned within the Port Capital Group.

20. Evergreen LP and its General Partner own the “**Terrace House Project"**. Evergreen LP is owned by a number of investors who subscribed for limited partnership units. They are at arm's length to the Port Capital Group.

**The Terrace House Project**

21. The Terrace House Project is a high-rise luxury residential strata development located at 1250 West Hastings St. (Coal Harbour area), Vancouver, BC. It is a 19-storey mixed-use development, providing a total of 20 residential units and 2 commercial retail units (“**CRU**”), above a 3-level underground parkade. The Terrace House Property is unique in that its primary structural material is timber.

22. The Proposed Monitor understands that pre-sales of the Terrace House Project began in approximately September 2017. Management has advised the Proposed Monitor that as of

today, only 3 residential units remain available for sale. Pre-sale agreements are in place for 17 residential units and both CRUs.

23. Abatement and demolition of a pre-existing structure at the current site of the Terrace House Project occurred in 2017, excavation and shoring occurred in 2018, and construction of the Terrace House Project commenced, with the underground parkade, in late 2018.

24. The Petitioners retained Urban One Buildings CM Inc. as the "**General Contractor**" for the Terrace House Project.

25. CMLS Financial Ltd. ("**CMLS**") is the Terrace House Project's construction lender (the "**Construction Lender**") pursuant to a commitment letter dated July 4, 2019 (the "**Construction Loan**"). The Construction Loan is secured by, among other things, a first ranking mortgage against the Terrace House Project. The current indebtedness on the Construction Loan is approximately $20.1 million (the "**Construction Loan Indebtedness**").

26. Aviva Insurance Company of Canada ("**Aviva**") provided a "**Deposit Protection Insurance Facility**" to permit the Petitioners to have access to the pre-sale purchasers' deposits monies for the payment of project costs. The Deposit Protection Insurance Facility is secured by, amongst other things, a second ranking mortgage against the Terrace House Project. Management estimates that approximately $14.7 million is currently owing pursuant to Aviva's insurance deposit facility. CMLS and Aviva collectively are defined herein as the "**Secured Creditors**").

27. The Proposed Monitor has obtained and reviewed a copy of a November 2019 report of the project's "**Quantity Surveyor**" and notes the following works have been carried out on site:

| **Item** | **Comments** |
|---|---|
| General / Site Works | Site offices, hoarding, and fencing in place; Excavation and shoring generally complete. Site Closed. |

| | |
|---|---|
| Structure | Suspended slab and columns generally complete to parkade levels; Forming and reinforcing in progress to Level 1. |
| Envelope | Parkade waterproofing installed. |
| Interior | Not Started. |
| Services | Underground services installed; In-slab services progressing. |

28. For clarity, the three (3) level parkade and structure for the first level of the building are substantially complete and the underground services (i.e. electrical and mechanical) have been installed.

**Causes of Insolvency**

29. The Reyes Affidavit describes that the Petitioners are undercapitalized in terms of equity and as a result, are unable to meet their obligation to fund any cost overruns on the Terrace House Project. The Construction Lender has determined that there are cost overruns that Evergreen LP is responsible to fund, for which funds are not currently available. In addition, the Port Capital Group has been unable to advance funds such that the Petitioners have not been able to pay interest due to their Construction Lender.

30. The Reyes Affidavit further describes that the financial difficulties of the Petitioners, and the Port Capital Group generally, are attributable to a number of factors, which were compounded by the widespread business closures as a result of the COVID-19 global pandemic. The uncertain financial impact of the current COVID-19 pandemic has resulted in potential investors withdrawing their interest in investing in the Port Capital Group's ongoing projects and has made it more difficult for the Port Capital Group to attract new investors.

31. As a result of all these circumstances, the Proposed Monitor is advised that the Petitioners' Construction Lender has stopped advancing under the construction lending facility.

32. On May 12, 2020, CMLS, as Construction Lender, made demand and issued a Notice of Intention to Enforce Security in respect of the Construction Loan Indebtedness. The Petitioners do not have sufficient funds with which to repay the Construction Loan Indebtedness.

33. The Reyes Affidavit describes that the Petitioners have been in negotiations with: (i) their secured lenders regarding potential forbearance agreements; and (ii) with potential investors regarding an equity investment in the overall Port Capital Group, including the Terrace House Property. So far none of these discussions has resulted in an agreement capable of execution that would be beneficial to the stakeholders generally, but the discussions are ongoing.

## ASSETS AND LIABILITIES OF THE PETITIONERS

### Assets

34. The primary asset of the Petitioners is the Terrace House Project. As is noted in the Reyes Affidavit, the Petitioners last obtained an appraisal of the Terrace House Project as at March 24, 2018 (the "**Appraisal**"). The Appraisal estimated the market value of the Terrace House Project as approximately $43.5 million. The Proposed Monitor has reviewed the Appraisal and notes that the estimate is for the "**Land Value**" only.

35. The Proposed Monitor also obtained and reviewed a copy of the most recent "**Progress Claim**" prepared by the General Contractor in December 2019. The Progress Claim outlines project costs (i.e. improvements) incurred to December 2019 of $12.9 million. The total construction budget of the Terrace House Project is approximately $52 million. As such, management estimates that construction of the Terrace House Project is approximately 20% complete.

**Liabilities**

36. The Reyes Affidavit describes the liabilities of the Petitioners as summarized below:

| | |
|---|---|
| **Secured Indebtedness** | |
| CMLS - Construction Loan | 20,100,000 |
| Aviva - Deposit Protection Insurance Facility | 14,700,000 |
| | **34,800,000** |
| **Unsecured Indebtedness** | |
| Unsecured creditors | 8,000,000 |
| Inter-company payables | 3,900,000 |
| | **11,900,000** |
| **Total Estimated Indebtedness** | **46,700,000** |

37. The secured indebtedness of the Petitioners of approximately $34.8 million consists of the Construction Loan and the Deposit Protection Insurance Facility as described above.

38. The unsecured indebtedness of the Petitioners primarily consists of amounts owing on account of trade debt, property taxes and unpaid professional firm and consultants fees. The purpose of the inter-company indebtedness is described above.

39. Based on what appeared in the general ledgers of the Port Capital Group as at February 29, 2020, the intercompany indebtedness owed by Evergreen LP to Development Inc. is approximately $3.9 million. The Port Capital Group's ledgers have not been audited or reconciled, and there may be additional inter-company transactions and amounts owed by Developments Inc., or to Developments Inc., by Evergreen LP.

**ENHANCED POWERS OF THE PROPOSED MONITOR**

40. The Petitioners are seeking provisions in the Proposed Initial Order that grants EY with "**Enhanced Powers**" to execute control over the Petitioners and to explore restructuring opportunities. If the relief sought by the Petitioners is granted by this Honourable Court, the

Monitor intends to begin consultations with the Construction Lender and to undertake actions to preserve and stabilize the Terrace House Project. Such actions may include:

a) the retention of a management team to develop a plan to resume construction on the Terrace House Project, if possible, with the support of its secured creditors; and

b) the administration of a the Proposed SISP, as described below, to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House Project that deals with the impact of intercorporate debt and intercorporate guarantees (as described in the Reyes Affidavit).

**PROPOSED SISP**

**Summary**

41. As is noted above, attached as a schedule to the Proposal Initial Order is r the Proposed SISP to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House Project. The Proposed SISP contemplates a '**dual track**' process where the Proposed Monitor would concurrently solicit non-binding letters of interest ("**LOIs**") for the following:

a) **Track I**: a refinancing of the Terrace House Project by securing:

   i. new financing;

   ii. additional equity investment; or

   iii. some combination of both new financing and equity investment; and

b) **Track II**: a sale of the Terrace House Project.

42. The Proposed SISP allows the Monitor to retain a commercial real estate agent (an "**Agent**") to market the Terrace House Project provided that the terms of retention (including

remuneration) are approved in advance by the Secured Lenders; alternatively, the Proposed Monitor will market the Terrace House Project and invoice the Petitioners based on its standard hourly rates.

43. Before June 12, 2020 (the "**Marketing Commencement Date**"), the Proposed Monitor (with or without the assistance of an Agent) will prepare the following documents in preparation for the Proposed SISP:

a) a teaser sale document (the "**Teaser**") which provides a brief outline of the opportunity to acquire the Property, a copy of which is attached hereto as Appendix "A";

b) a confidential information memorandum (the "**CIM**") that summarizes the acquisition opportunity, provides detailed financial and operational information, and provides an overview of the Proposed SISP;

c) a form of non-disclosure agreement ("**NDA**"); and

d) a standardized form of LOI to promote comparability of the offers, to be prepared in consultation with the Petitioners and the Secured Creditors.

44. The Proposed Monitor has also started to populate an electronic data room (the "Data Room"), with key financial, operational and other information, for potential purchasers to evaluate the acquisition opportunity following the signing of an NDA. The Proposed Monitor will complete the population of the Data Room by the Marketing Commencement Date.

<u>Phase I - Solicitation and Submission of Non-Binding LOIs</u>

45. Should this Honourable Court approve the Proposed SISP, the first step in the sale process would consist of:

a) distributing the Teaser to a list of potential purchasers;

b) upon receipt of an executed NDA, providing interested parties ("**Bidders**") with access to the Data Room and a copy of the CIM;

c) placing advertisements in the real estate section of the Globe and Mail (national edition); and

d) contacting potential purchasers either by telephone or email soliciting their interest.

46. Phase I will conclude with the Bidders being requested to submit a non-binding LOI. The Proposed Monitor will review and analyze the LOI's and select one or more of the Bidders to participate in a second round offering process.

47. All LOIs will be evaluated based upon, but not limited to, the structure proposed by the prospective purchaser, transaction value, the prospective purchaser's ability to complete the transaction, and the timeliness and proposed conditions of closing, if any.

48. The Proposed Monitor will qualify, in consultation with the Petitioners and the Secured Creditors, the LOIs judged to be most attractive, based on the above defined criteria, to the Proposed Monitor for Phase II of the Proposed SISP (the "**Qualified Bidders**").

49. The Proposed Monitor will not be obliged to accept any offer and reserves the right to reject any or all offers received should they not ascribe sufficient value to the Terrace House Project. If at the end of Phase I:

a) a refinancing proposal that is satisfactory to the Secured Creditors is received, the Proposed SISP shall be discontinued and the Parties shall undertake next steps to implement same by way of filing a Plan of Arrangement or otherwise; or

b) a refinancing proposal that is satisfactory to the Secured Creditors <u>is not</u> received, the Proposed SISP will not be terminated and the Proposed Monitor will continue with Phase II.

Phase II – Negotiation of Definitive Agreement(s) and Auction

50. Qualified Bidders will be invited to:

a) undertake final due diligence procedures; and

b) negotiate the terms of a definitive agreement with the Proposed Monitor on behalf of the Petitioners ("**Qualified Bids**").

51. The Monitor, in consultation with the Secured Creditors will review and assess all Qualified Bids received by the Phase 2 Bid deadline and will either a) negotiate a definitive agreement with the party that submitted the highest or otherwise best Qualified Bid, or b) terminate the Proposed SISP.

52. The Monitor in consultation with the Secured Creditors will review and assess all Qualified Bids received by the Phase 2 Bid Deadline and determine if the Proposed SISP should progress to an "**Auction**".

53. If an Auction is deemed appropriate, a letter outlining the details of the auction will be sent to all Auction Qualified Bidders. If an Auction occurs, the highest or otherwise best bid will be selected as the "**Starting Bid**".

54. If an Auction is not deemed to be appropriate, the Proposed Monitor (in consultation with the Secured Creditors) will either, a) negotiate a definitive agreement with the party that submitted the highest or otherwise best Qualified Bid, or b) terminate the Proposed SISP.

55. All agreements resulting from the Proposed SISP will be subject to approval from this Honourable Court.

**The Marketing Period**

56. A summary of the proposed timeframe to market the Property (the "**Marketing Period**") as described above is provided in the table below:

| Milestone | Time required | Deadline |
|---|---|---|
| **Court Approval of the Initial Order and the Proposed SISP** | | May 29 |
| **Phase I** | | |
| Commencement of marketing activities<br>• Direct contact with buyer list<br>• Newspaper and print advertisements<br>• Media strategy and press release<br>• Execution of Confidentiality Agreements to access the data room | 2 weeks | No later than June 12 |
| Preliminary due diligence of prospective purchasers that sign the NDAs including site visits | 4 weeks | June 12 - July 10 |
| Deadline for submission of non-binding LOI | 6 weeks from Court Approval | July 10 |
| Review submissions with secured lenders and notify Qualified Bidders for Phase II | 1 week | July 17 |
| **Phase II** | | |
| Additional due diligence of Qualified Bidders | 3 weeks | July 17 – August 7 |
| Deadline for submission of Bindings Bids | 3 weeks | August 7 |
| Negotiation of definitive agreement with successful bidder / Auction (as determined appropriate by the Monitor | 2 weeks | August 21 |
| Court approval of a definitive agreement | 1 week | August 21 |
| Closing of transaction | | August 30 |

57. Proposed Monitor is of the view that that there is a captive market for an investment opportunity involving the Terrace House Project and that the Marketing Period is sufficient for full distribution and exposure to the marketplace.

58. Notwithstanding the foregoing, the Proposed Monitor reserves the right to extend any of the foregoing deadlines should, after consultation with the Secured Lenders, the complexity of transaction negotiations or any other factor warrant the Proposed Monitor to do so in order to maximize value to the Petitioners' stakeholders. For greater clarity, the deadlines described above are indicative of minimum time periods only.

## OVERVIEW OF THE THIRTEEN WEEK CASH FLOW PROJECTION

59. The Petitioners, with the assistance of the Proposed Monitor, have prepared a Cash Flow Forecast for the thirteen (13) week period from June 1, 2020 to August 28, 2020 (the "**Cash Flow Period**") for the purpose of projecting the Petitioners' estimated liquidity needs during the Cash Flow Period. A copy of the Cash Flow Forecast is attached to the Reyes Affidavit and is summarized below.

| | **First 10 days** | **First 30 days** | **13 Week Total** |
|---|---|---|---|
| **Beginning Cash** | **-** | **-** | **-** |
| **Receipts** | **-** | **-** | **-** |
| **Disbursements** | **($45,000)** | **($251,000)** | **($1,008,000)** |
| Payroll, payroll taxes and benefits | - | (35,000) | (105,000) |
| Insurance | - | (6,000) | (18,000) |
| Project / development costs | - | (30,000) | (300,000) |
| General admin & miscellaneous | (5,000) | (20,000) | (65,000) |
| Site preservation & contingency | (10,000) | (40,000) | (130,000) |
| Property tax | - | - | - |
| Restructuring costs | (15,000) | (60,000) | (195,000) |
| Development management / CRO | (15,000) | (60,000) | (195,000) |
| DIP interest payments | - | - | - |
| **Ending Cash Balance** | **($45,000)** | **($251,000)** | **($1,008,000)** |
| **DIP Financing Draw** | **$50,000** | **$250,000** | **$1,015,000** |
| **Ending Cash after DIP Financing** | **$5,000** | **($1,000)** | **$7,000** |

60. The Cash Flow Forecast is prepared with the underlying assumption (amongst others) that the Proposed Initial Order will be granted, and that all payments to creditors will be stayed and dealt with as part of the CCAA proceedings. The Cash Flow Forecast does not include

any line items for cash receipts or amounts in relation to potential amounts realized from the sale of any assets, or injections of new equity into the Petitioners.

61. The Petitioners' Cash Flow Forecast shows that during the Cash Flow Period, the Petitioners project no receipts and estimate combined disbursements of approximately $1.0 million. The Cash Flow Forecast projects that the Petitioners will have sufficient liquidity during the first thirteen weeks of these CCAA proceedings, subject to the provision of interim financing to be provided through a debtor-in-possession ("**DIP**") creditor facility.

62. The Cash Flow Forecast assumes that no payments will be made on account of project construction or development costs within the first twenty-one (21) days pending a comprehensive review of the status of the Terrace House Project by the Proposed Monitor and consultation with key stakeholders.

63. The Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to Information supplied to it by certain key members of Management. Since the probable and hypothetical assumptions need not be supported, the Proposed Monitor's procedures with respect to these assumptions were limited to evaluating whether they were consistent with the purpose and context of the Cash Flow Forecast. The Proposed Monitor also reviewed the support provided by Management for the probable and hypothetical assumptions, and the preparation and presentation of the Cash Flow Forecast.

64. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe that, in all material respects:

   a) the probable and hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;

   b) as the date of this Report, the probable and hypothetical assumptions developed by Management are not suitably supported and consistent with the restructuring plans of the Petitioners or do not provide a reasonable basis for the Cash Flow Forecast; or

c) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

65. The Petitioners are seeking a stay of proceedings for a period of ten (10) days until June 8, 2020 (the "**Initial Stay Period**"). The Proposed Monitor is cognizant of the current liquidity projections in the Cash Flow Forecast and intends to monitor the Petitioners' liquidity throughout the Initial Stay Period and provide the Court with an update, in the event that it becomes apparent that the Petitioners will not have sufficient liquidity to fund their operations throughout the entirety of the Initial Stay Period.

66. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the probable and hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved.

67. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

## INTERIM FINANCING DURING THE CCAA PROCEEDINGS

68. The Cash Flow Forecast contemplates that the Petitioners require interim financing in order to facilitate the Petitioners' restructuring plan.

69. The Proposed Monitor has assisted the Petitioners to identify a lender to provide DIP financing to the Petitioners. In particular, the Proposed Monitor had approached four parties on behalf of the Petitioners to determine interest in providing DIP financing to the Petitioners. The

Proposed Monitor notes that the Petitioners are currently negotiating the terms of a DIP Facility with one or more parties and the Proposed Monitor anticipates that the terms of a DIP Facility will be finalized and presented to this Honourable Court shortly.

70. It should be noted that the Petitioners will be the sole beneficiaries of the DIP facility, for purpose of advancing these CCAA proceedings, if so granted by this Honourable Court, and funds will not be made available, on an inter-company basis or otherwise, to the Port Capital Group.

71. Based on the discussions to date, the Proposed Monitor is of the view that current negotiations for a DIP Facility are close to final, but the terms are not yet confirmed. The Petitioners anticipate seeking approval of the DIP Facility with the consent of the Secured Creditors at the come-back hearing; and that during this time, assuming all payments are stayed by the Initial Order, the Petitioners can continue for the 10-day period of the Initial Stay.

**RELEVANT MATTERS ADDRESSED IN THE PROPOSED INITIAL ORDER**

72. The Proposed Initial Order provides for a priority charge up to a maximum amount of $250,000 (the "**Administration Charge**") in favour of the Petitioners' counsel, the Proposed Monitor and its counsel, as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings. Professional fee obligations secured by the Administration Charge will be paid in the ordinary course from funding provided by, among other things, a DIP Facility should one be approved in the future.

73. The Proposed Monitor is of the view that, given the current liquidity constraints of the Petitioners and the reasons set out in the Reyes Affidavit, the proposed Administration Charge is required and reasonable in the circumstances. The Proposed Monitor believes that the

quantum of the Administration Charge is reasonable in the circumstances based upon a review and assessment of the anticipated professional costs to be incurred during this matter.

**Creditor Notification**

74. The Proposed Initial Order contemplates that the Proposed Monitor shall (i) without delay, publish in the Vancouver Sun a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this 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 $1,000, 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.

75. The Proposed Monitor has arranged for a website at www.ey.com/ca/terracehouse (the "**Monitor's Website**"). All court documents and certain other documents will be posted on the Monitor's Website.

**CONCLUSIONS AND RECOMMENDATIONS**

76. The Proposed Monitor has reviewed the Petitioners' filing materials and has consented to act as the Monitor should this Honourable Court grant the Proposed Initial Order. The Proposed Monitor further notes that the Petitioners have consulted with their Secured Creditors and seek the approval of the Proposed Initial Order on their consent.

All of which is respectfully submitted this 28th day of May, 2020.

**ERNST & YOUNG INC.**
in its capacity as Proposed Monitor
of Port Capital Development (EV) Inc. and
Evergreen House Development Limited Partnership
and not in its personal or corporate capacity

Per:

**Michael Bell, CPA, CA, CIRP LIT**
**Senior Vice President**

~~MODEL CCAA INITIAL ORDER~~

~~[Current to August 1, 2015]~~**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 ~~[*CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44 and/or the~~ *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, ~~c~~C. 57 ~~and/or any other applicable Provincial Statute]~~**, AS AMENDED**

– AND –

IN THE MATTER OF ~~[Petitioner~~**A PLAN OF COMPROMISE AND ARRANGEMENT OF PORT CAPITAL DEVELOPMENT (~~s~~EV)~~]~~ INC. and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP**

~~PETITIONER(S)~~

~~O R D E R~~

**ORDER MADE AFTER APPLICATION**~~[1]~~

**(Initial Order)**

| | | |
|---|---|---|
| BEFORE THE HONOURABLE | ) | |
| | ) | ~~dd/mm/yyyy~~**29/MAY/2020** |
| ~~__________~~**MADAM JUSTICE FITZPATRICK** | ) | |

~~[1] This model Order is not in any way determinative of the applicant's entitlement to the relief provided for in this model Order. It is the responsibility of counsel to ensure that the form of Order they propose is appropriate in the circumstances of the case and to justify the relief they are seeking, including by providing the necessary evidentiary support and judicial authority.~~

THE APPLICATION of the Petitioners coming on for hearing~~[2]~~ at Vancouver, British Columbia, on the 29th day of ~~, 201~~ May, 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; AND UPON READING the material filed, including the First Affidavit of Macario (Tobi) Reyes sworn ~~, 201~~ May 18, 2020 and the consent of Ernst & Young, Inc. ("EY") to act as Monitor; AND UPON BEING ADVISED that the secured creditors ~~[and others]~~ who are likely to be affected by the charges created herein were given notice~~[3]~~; 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:

**JURISDICTION**

1. ~~The Petitioner~~**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.**

~~[2] Section 11(1) of the CCAA provides for notice of an application to be given. CCAA orders may, and in some cases must, be sought on notice to affected parties, if this is possible. Applications may be made without notice "as [the court] may see fit", although recent British Columbia cases have commented on the appropriateness of bringing such applications without notice: *Re Encore Developments Ltd.* 2008 BCSC 13 and *Re Marine Drive Properties Ltd*. 2009 BCSC 145. If service has been abridged, the Order should reflect that.~~

~~[3] Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2)~~

**SUBSEQUENT HEARING DATE**

2. The hearing of the ~~Petitioner's~~**Petitioners'** application for an extension of the Stay Period (as defined in paragraph ~~[~~15~~]~~ of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at ______ __.m. on ____________, the _____ day of ~~___________, 201__~~**June 2020** or such other date as this Court may order.

**PLAN OF ARRANGEMENT**

3. The Petitioner**s** 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**

4. Subject to this Order and any further Order of this Court, ~~the Petitioner~~**including for clarity the Enhanced Monitor's Powers provided herein, the Petitioners** shall remain in possession and control of ~~its~~**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 ~~its~~**their** business (the ~~"~~**"Business~~"~~"**) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner**s** 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 ~~it~~**them**, with liberty to retain such further Assistants as ~~it~~**they** deem~~s~~ reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

~~[Cash Management System[4]]~~

5. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:~~[5]~~

(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**~~"~~");~~[6]~~ and

~~[4] This provision but should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash. If to be included, the model wording for the provision is as follows: "THIS COURT ORDERS that the Petitioner shall be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioner of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioner, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System."~~

~~[5] Paragraphs 5 and 6 were separated to make it clear that only very limited payments may be made on account of pre-filing accruals and expenses. The Petitioner may consider seeking authority to make other payments during the stay, such as an amendment to paragraph 5 allowing certain payments to creditors, including critical suppliers, on the following terms:~~

~~"...... with the written consent of the Monitor:~~

~~(i) pay the entire amount of its obligations to any creditor if the amount of such obligations, as agreed between the Petitioner and the creditor, is $__________ or less as at the Order Date;~~

~~(ii) pay $__________ to any other creditor to which the outstanding obligations of the Petitioner are greater than $__________ as at the Order Date, provided such creditor agrees to accept that amount in full satisfaction of all obligations of the Petitioner to such creditor as at the Order Date;~~

~~(iii) pay amounts owing to creditors who hold possessory or statutory liens against any asset of the Petitioner where the value of such asset exceeds the amount of the possessory or statutory liens or where the asset is deemed critical by the Petitioner and the Monitor to the business operations of the Petitioner; and~~

~~(iv) amounts outstanding to creditors for goods and services provided prior to the Order Date where expressly authorized by this Order or any further Order of this Court."~~

~~[6] The Petitioner may wish to specifically apply to pay severance pay outstanding as at the Order Date.~~

(b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the ~~Petitioner's~~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 ~~is~~ are named as a party or is otherwise involved, whether commenced before or after the Order Date; and

(iii) any related corporate matters.

6. Except as otherwise provided herein, ~~the Petitioner~~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~~[7]~~ 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

~~[7] The Petitioner may wish to consider a limit on this prohibition to allow for flexibility: "…. provided that any capital expenditure exceeding $__________ shall be approved by the Monitor."~~

the Order Date but excluding any interest on the ~~Petitioner's~~**Petitioners'** obligations incurred prior to the Order Date); and

(c) fees and disbursements of the kind referred to in paragraph **[5(b)]** which may be incurred after the Order Date.

7. The Petitioner**s** ~~is~~ **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; ~~[8]~~

(b) all goods and services or other applicable sales taxes (collectively, ~~"~~"**Sales Taxes**~~"~~") required to be remitted by the Petitioner**s** 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.

~~[8] The definition of Wages in paragraph 5(a) is intended to allow payment of these amounts even if owed prior to the Order Date in recognition of the fact that Wages are paid at the end of a stub period and that continued employment is critical to the ongoing operations of the Petitioner. The extension of the ability of the Petitioner to make payments in addition to just Wages in this paragraph is intended to : (a) protect directors and officers from statutory claims; and (b) recognize that Section 6(3) of the CCAA provides for the payment of some of these amounts in a restructuring in any event . It is anticipated that the magnitude of such obligations will be brought to the attention of the Court if significant.~~

8. Until such time as a real property lease is disclaimed[9] 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.

9. Except as specifically permitted herein, the Petitioners ~~is~~ **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 ~~its~~**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 ~~its~~**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; ~~[10]~~

(d) to not grant credit except in the ordinary course of the Business only to ~~its~~**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

~~[9] The term "resiliate" should be used if there are leased premises in the Province of Quebec – see also paras. 12 and 13.~~
~~[10] Counsel may wish to consider adding a provision allowing the granting of PMSI security after the Order Date.~~

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

## ~~FINANCIAL ARRANGEMENTS~~

10. ~~Notwithstanding any other provision in this Order:~~Notwithstanding paragraph 9, 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.

~~(a) the Petitioner is hereby authorized and empowered to borrow, repay and reborrow from ______________ (the "**Lender**") such amounts from time to time as the Petitioner considers necessary, and the Lender shall be entitled to revolve its operating loan facility (the "**Lender Loan Facility**") and collect interest, fees and costs on the Lender Loan Facility, subject to such amendments as are agreed between the Lender and the Petitioner;~~

~~(b) the Lender Loan Facility shall be secured by the same charge (the "**Lender Charge**") as secured the Lender Loan Facility as at the Order Date; and~~

~~(c) the Petitioner is authorized to deal with the Lender in respect of the Lender Loan Facility on such terms as may be negotiated and agreed upon between the Petitioner and the Lender.~~

## RESTRUCTURING

11. 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 ~~its~~their Business or operations and commence marketing efforts in respect of any of ~~its~~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~~][11]~~. 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 ~~its~~their employees or temporarily lay off such of ~~its~~their employees as it deems appropriate~~]~~;~~[12] and~~

(c) pursue all avenues of refinancing for ~~its~~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**").

12. The Petitioners shall provide each of the relevant landlords with notice of the ~~Petitioner's~~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 ~~Petitioner's~~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

~~[11] Section 36 of the CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)), but rather requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or been made available at the initial CCAA hearing.~~

~~[12] It is not clear to the BCMIOC whether the termination of an employee is a "disclaimer or resiliation" of the employment agreement within the meaning of Section 32 of the CCAA. Since the termination of an employee may not be a matter governed by Section 32 of the CCAA (except to the extent that collective agreements are exempted from the application of that Section), the BCMIOC has left this provision in the Model Order.~~

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 ~~the~~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 ~~Petitioner’s~~**Petitioners'** claim to the fixtures in dispute.

13. 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.

14. 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, ~~is~~are permitted to, and hereby shall, disclose personal information of identifiable individuals in ~~its~~their possession or control to stakeholders, ~~its~~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.~~[13]~~

**STAY OF PROCEEDINGS, RIGHTS AND REMEDIES** ~~[14]~~ ~~[15]~~

15. Until and including ____________ ~~[MAX. 30 DAYS FROM ORDER DATE]~~ **___, 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 ~~Petitioner~~**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

~~[13] Counsel should consider whether the inclusion of this paragraph concerning exemption from privacy legislation should be included as part of the Initial Order. The paragraph is intended to enable the Petitioner to disclose personal information in the course of its dealings with potential lenders, investors or purchasers. Section 18(1)(o) of the British Columbia *Personal Information Protection Act* allows the release of such information only when "required or authorized by law". Accordingly, it may be appropriate to wait until such a transaction is contemplated before seeking to include this term in an order, and counsel may wish to consider whether it is necessary to adduce evidence showing the court that disclosure is necessary.~~

~~[14] In keeping with the underlying philosophy of the Model Order, these provisions include a succinct stay provision which is intended to encapsulate the very broad stay provisions authorized in Section 11 of the CCAA. These provisions are specifically subject to specific limitations, including to permit a regulatory body to continue its investigations of the Petitioner or to permit a lien or security-holder to make filings and commence Proceedings necessary to preserve their lien or security. If a case can be made out that such a Proceeding would have the effect of prejudicing the Petitioner's ability to restructure, then, on application based on the applicable facts, the Model Order can be amended to stay such Proceedings.~~

~~[15] In addition, counsel should consider clauses dealing with Section 81.1 and 81.2 of the BIA, as may be appropriate.~~

affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. 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.

17. Nothing in this Order, including paragraphs ~~[~~**15**~~]~~ and ~~[~~**16**~~]~~, shall: (i) empower the Petitioners to carry on any business which the Petitioners ~~is~~ **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

18. 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. ~~[16]~~

~~[16] The Petitioner may wish to consider whether an application should be made relating to the ongoing entitlement/benefit of any applicable volume rebates or discounts based upon volumes supplied during the period prior to the Order Date.~~

**CONTINUATION OF SERVICES**

19. 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 ~~its~~**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.~~[17]~~

**NON-DEROGATION OF RIGHTS**

20. 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

~~[17] Counsel may wish to consider whether to seek an order deeming one or more suppliers "critical suppliers" in accordance with Section 11.4 of the CCAA. Notice of an application to deem a supplier a critical supplier must be given to the proposed critical supplier and any secured creditors likely to be affected by the security or charge granted in favour of the proposed critical supplier. Suggested wording for the additional paragraph is as follows: "THIS COURT ORDERS that [Name of supplier] is hereby deemed a critical supplier (the "Critical Supplier") in accordance with section 11.4 of the CCAA and shall, from the Order Date, continue to supply goods and services to the Petitioner on such terms and conditions as are consistent with the supply relationship between the Critical Supplier and the Petitioner. The Critical Supplier is hereby granted a charge (the "Critical Suppliers Charge") on the Property, which charge shall not exceed an aggregate amount of $__________, as security for any amounts for which the Petitioner becomes indebted to the Critical Supplier for the supply of goods or services after the Order Date. The Critical Suppliers Charge shall have the priority set out in paragraphs 40 and 42 herein."~~

the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.~~[18]~~

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. 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.

~~**DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**~~ ~~[19]~~

~~22. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings[20], except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~[18] This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

~~[19] Counsel should be aware that the provisions relating to Directors/Officers/Employees Indemnification and Charge may not be appropriate in all circumstances.~~

~~[20] The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge) and the scope of the indemnity are discretionary matters that should be addressed with the Court.~~

~~23. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")[21] on the Property, which charge shall not exceed an aggregate amount of **$________**, as security for the indemnity provided in paragraph **[22]** of this Order. The Directors' Charge shall have the priority set out in paragraphs **[40]** and **[42]** herein.~~

~~24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph **[22]** of this Order.~~

**APPOINTMENT OF MONITOR**

**22.** ~~25. ____________~~ **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 Petitioner**s** with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner**s** and ~~its~~**their** shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner**s** 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.

**23.** ~~26.~~ 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;**

~~[21] Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Petitioner could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

**(b)** ~~(a)~~ monitor the Petitioner**s**'~~s~~ receipts and disbursements;

**(c)** ~~(b)~~ report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

~~(c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the Interim Lender (as hereinafter defined)[22] and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Petitioner and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;~~

(d) advise the Petitioner**s** in ~~its~~**their** preparation of the ~~Petitioner's~~**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 [TIME INTERVAL], or as otherwise agreed to by the Interim Lender~~;

(e) advise the Petitioner**s** in ~~its~~**their** development of the Plan and any amendments to the Plan;

(f) assist the Petitioner**s**, to the extent required by the Petitioner**s**, with the holding and administering of creditors~~'~~**'** or shareholders~~'~~**'** meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner**s**, to the extent that is necessary to adequately assess the ~~Petitioner's~~**Petitioners'** business and financial affairs or to perform its duties arising under this Order;

~~[22] This Model Order assumes that there is an Interim Lender.~~

(h) 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

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

24. ~~27.~~ 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.

25. ~~28.~~ 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**")~~[23]~~, 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.

~~[23] Counsel should consider whether the Petitioner has property in any other Provinces and, if so, consider whether it is appropriate to include a reference to the relevant environmental legislation of those Provinces.~~

26. ~~29.~~ The Monitor shall provide any creditor of the ~~Petitioner and the Interim Lender~~**Petitioners** with information provided by the Petitioner**s** 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 Petitioner**s** ~~is~~ **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 Petitioner**s** may agree.

27. ~~30.~~ 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. ~~[24]~~

**ENHANCED MONITOR POWERS**

**28. 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.**

**29. 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;**

~~[24] Counsel should be aware that the provision exempting the Monitor in situations except for gross negligence may not be appropriate in all circumstances.~~

(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 30, 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.

30. 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 29(k)(i) and 29(k)(ii) of this Order shall apply.**

**31. 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.**

**32. 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**

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

**34.** ~~32. The~~**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.

35. ~~33.~~ 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 ~~Petitioner's~~Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs ~~[40]~~36 and ~~[42]~~38 hereof. ~~[25]~~

~~**INTERIM FINANCING**~~

~~34. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from [INTERIM LENDER'S NAME] (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 $______________ unless permitted by further Order of this Court.~~

~~35. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioner and the Interim Lender dated as of [DATE] (the "**Commitment Letter**"), filed.~~

~~36. The Petitioner is 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 Petitioner is hereby authorized and directed to pay and perform all of~~

~~[25] Counsel should be aware that the provision allowing for an Administration Charge in favour of the Petitioner's counsel may not be appropriate in all circumstances.~~

~~its 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.~~

~~37. 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 **[40]** and **[42]** hereof.~~

~~38. 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 ____ days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner 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 Petitioner and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioner against the obligations of the Petitioner 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 Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; 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 Petitioner or the Property.~~

~~39. 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 Petitioner under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.~~

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

**36.** ~~40.~~ The ~~priorities of the~~ Administration Charge~~,~~ **(to** the ~~Directors' Charge and the Interim Lender's Charge, as among them, shall be as follows:~~

~~First – Administration Charge (to the~~ maximum amount of $~~___________);~~

~~Second – Interim Lender's Charge;~~

~~Third – Directors' Charge (to the maximum amount of $___________)~~**250,000.00) shall have first priority over any other charge, if any, created by this Order**. ~~[26]41.~~ Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge~~, the Interim Lender's Charge and the Directors' Charge (collectively, the "**Charges**")~~ shall not be required, and that the ~~Charges~~**Administration Charge** shall be effective as against the Property and shall be valid and enforceable~~[27]~~ for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the ~~Charges~~**Administration Charge** coming into existence, notwithstanding any failure to file, register or perfect any such ~~Charges~~**Administration Charge**.

~~[26] The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~[27] The term "opposable" should be included if there is Property in the Province of Quebec.~~

**37.** ~~42. Each of the Charges~~**The Administration Charge** shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such ~~Charges~~**Administration Charge** 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.~~[28]~~

**38.** ~~43.~~ Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner**s** shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the ~~Charges~~**Administration Charge**, unless the Petitioner**s** obtains the prior written consent of the Monitor~~, the Interim Lender~~ and the beneficiaries of the Administration Charge ~~and the Director's Charge~~.

**39.** ~~44.~~ The Administration Charge~~, the Director's Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the ~~Charges~~**Administration Charge** (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,

~~[28] This Model Order is not intended to be determinative of whether the Court has the jurisdiction to grant the Administration Charge, the Interim Lender's Charge and the Director's Charge priority over the deemed trusts identified in subsection 37(2) of the CCAA. If the Petitioner seeks an order granting priority for such charges over any such deemed trusts, notice of the application should be given to the Federal and Provincial Crowns, as appropriate. If the Petitioner does not seek an order subordinating any such deemed trust to such charges, the following should be added to the end of paragraph 42: “with the exception of any deemed trust amounts provided for in subsection 37(2) of the CCAA.”~~

debenture, sublease, offer to lease or other agreement (collectively, an ~~“~~"**Agreement**~~”~~") which binds the Petitioner; 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~~**Administration Charge** shall **not** create or be deemed to constitute a breach by the Petitioner**s** of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Petitioner entering into the Commitment Letter, the~~ creation of the ~~Charges, or the execution, delivery or performance of the Definitive Documents~~**Administration Charge**; ~~and~~

(c) the payments made by the Petitioner**s** pursuant to this Order~~, the Commitment Letter or the Definitive Documents,~~ and the granting of the ~~Charges~~**Administration Charge**, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**40.** ~~45.~~ THIS COURT ORDERS that any **Administration** Charge created by this Order over leases of real property in Canada shall only be ~~a~~**an Administration** Charge in the ~~Petitioner’s~~**Petitioners'** interest in such real property leases.

**SERVICE AND NOTICE**

**41.** ~~46.~~ The Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~**the *Vancouver Sun* newspaper** a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this 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 Petitioner**s** 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.

42. ~~47.~~ The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners'~~s~~ 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.~~[29]~~

43. ~~48.~~ 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: ~~[INSERT WEBSITE ADDRESS].~~ www.ey.com/ca/terracehouse

44. ~~49.~~ 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: ~~[INSERT WEBSITE ADDRESS].~~ www.ey.com/ca/terracehouse

45. ~~50.~~ Notwithstanding paragraphs ~~[47]~~42 and ~~[49]~~44 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns~~[30]~~ in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the

[29] ~~In all instances, counsel should address the manner of service with the Court, including advising as to how service was or is proposed to be effected.~~

[30] ~~Counsel should consider whether the Petitioner has property in any other Provinces and, if so, consider whether it is appropriate to include a reference to those Provinces and the relevant legislation of those Provinces with respect to service.~~

Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown. ~~31~~

**GENERAL**

**46.** ~~51.~~ 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.

**47.** ~~52.~~ Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

**48.** ~~53.~~ 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.

**49.** ~~54.~~ 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

~~[31] *The Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8 provides for service on the British Columbia Crown, as follows:~~
~~8. A document to be served on the government~~
~~(a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and~~
~~(b) is sufficiently served if~~
~~(i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or~~
~~(ii) mailed by registered mail to the Deputy Attorney General at Victoria.~~
~~A similar provision relating to the Federal Crown is found at s. 23(2) of the *Crown Liability and Proceeding Act*, R.S. 1985, c. C-50, which provides for service on the Deputy Attorney General of Canada or the chief executive officer of the agency in whose name the proceedings are taken, as the case may be. The Federal Crown requests that service of documents be by delivery to Department of Justice, 900 - 840 Howe Street, Vancouver, B.C. V6Z 2S9.~~

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.

**50.** ~~55.~~ 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.

**51.** ~~56.~~ The Petitioners ~~is~~ **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.

**52.** ~~57.~~ 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.

**53.** ~~58.~~ 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.

**54.** ~~59.~~ Endorsement of this Order by counsel appearing on this application is hereby dispensed with. [32]

[32] ~~Counsel should be aware that the final form of the Order may be modified before entry at the discretion of the Chambers Judge.~~

55. ~~60.~~ This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date. ~~[33]~~

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**
~~☐ Party ☑~~ Lawyer for the Petitioners

~~<Print Name>~~

~~Signature of~~
~~☐ Party ☐ Lawyer for <name of party(ies)>~~

~~<Print Name>~~

BY THE COURT

REGISTRAR

~~[33] For a provision of this or any subsequent order in these proceedings to make any provincial law inapplicable or inoperative, notice must be given under s. 8 of the *Constitutional Question Act* R.S.B.C. 1996, c. 68. If notice is not given, the provision could later be challenged and set aside.~~

**Schedule "A"**

(List of Counsel)

| Counsel name/litigant | Party represented |
|---|---|
| Colin D. Brousson | CMLS Financial Ltd. |
| William Roberts | Aviva Insurance Company of Canada |
| Peter Rubin | The Monitor |
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# 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 I 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.