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

APPLICATION RECORD
(of the Applicants, Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership)

Counsel for the Applicants

BENNETT JONES LLP
Barristers and Solicitors
2500 – 666 Burrard Street
Vancouver, B.C. V6C 2X8

Attention: David E. Gruber
Telephone: 604.891.5154
Fax: (604) 891-5100
Email: gruberd@bennettjones.com

Date: February 26, 2021
Time: 9:00 a.m.
Place: Vancouver Registry (by MS Teams).
Time estimate: 45 minutes

Application Record provided by:
Counsel for the Applicants

No. S-205095
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PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT
LIMITED PARTNERSHIP

INDEX TO APPLICATION RECORD

Tab.	Document	Filed
1.	Notice of Application	[To be filed]
2.	Draft Order	
3.	Fourth Report of the Monitor	[To be filed]
Tab.	Legislation	
4.	*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11, 11.02	

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

NOTICE OF APPLICATION

Names of applicants: Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership

To: The Service List

TAKE NOTICE that an application will be made by the applicants to Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street Vancouver BC V6Z 2E1 on February 24, 2021 at 9:00 a.m., by MS Teams, for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order substantially in the form attached as **Schedule A** hereto, providing for the following relief:

   (a) Abridging the time for service of this notice of application, to the extent necessary;

   (b) Extending the stay of proceedings to and including April 30, 2021; and

   (c) Approving an increase to the credit facility provided by Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") from $1,250,000 to $1,500,000.

2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioners, Evergreen House Development Limited Partnership and its general partner, Port Capital Development (EV) Inc., own the **"Terrace House Project"**. The Terrace House Project consists of an ongoing development of a high-rise luxury residential strata development in the Coal Harbour neighbourhood, located at 1250 W Hastings St., Vancouver.

2. On May 29, 2020, the Petitioners obtained an order in these proceedings (the "**Initial Order**") granting them various relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

3. Among other things, the Initial Order established a stay of proceedings (the "**Stay of Proceedings**") effective until June 8, 2020 and appointed Ernst & Young, Inc. as monitor (the "**Monitor**") in these proceedings with enhanced powers to execute control over the Petitioners, explore restructuring opportunities and administer a “dual-track” sale and investment solicitation process to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House Property (the "**SISP**").

4. On June 8, 2020, the Petitioners obtained an amended and restated initial order (the "**ARIO**") in these proceedings that, among other things:

(a) extended the Stay of Proceedings to and including September 3, 2020;

(b) approved an interim financing facility (the "**DIP Facility**") with the Interim Lender.

5. On December 1, 2020, this Honourable Court granted an extension of the stay of proceedings, which is currently set to expire on February 26, 2021. The Court also approved a Bid Offer Agreement with respect to the Terrace House Project.

Activities since the last stay extension

6. Since the date of the last stay extension, the Monitor has, among other things, with the cooperation of the Petitioners:

a) managed the site preservation of the Terrace House Project, including payment to vendors and suppliers for post-filing activity;

b) managed the cash flows of the Petitioners, prepared reporting packages and corresponded with the DIP Lender regarding the DIP Facility;

c) attended numerous meetings with the Terrace House Project's secured creditors;

d) Worked with Bosa Properties (OC) Inc. ("**Bosa**") to advance its bid; and

e) responded to numerous inquiries from various financial stakeholders of the Terrace House Project as well as other third parties.

Update on the Bosa Bid

7. All capitalized terms used in this section of this Notice of Application not otherwise defined have the meanings ascribed to them in the Sale and Investment Solicitation Process ("**SISP**").

8. The Monitor carried out a two phased sales process in accordance with the SISP and following consultation with the Petitioners' secured creditors, the Monitor determined that the Phase II Bid submitted by Bosa was the best offer submitted.

9. On November 10, 2020, the Monitor, on behalf of the Petitioners, executed a "**Bid Offer Agreement**" with Bosa. The Bid Offer Agreement is conditional only and sets out the framework of the initial main business terms for a purchase and sale agreement for the Terrace House Project (a "**Formal Agreement**").

10. The key non-financial terms of the Bid Offer Agreement include the following:

(a) a due diligence period of 75 days;

(b) the contents and reporting of the feasibility study and due diligence review relating to the economics of the Terrace House Project (the "**Feasibility Study**") will be made available to the Monitor; and

(c) a break fee in the amount of $100,000 (the "**Break Fee**") is payable to Bosa if the Monitor on behalf of the Petitioners enters into a Formal Agreement with Bosa but an alternative transaction is approved by the Court and completed.

11. The Bid Offer Agreement was approved by this Court on December 1, 2020. It has become apparent that it will not advance to a Formal Agreement and the Monitor needs to revisit other options for sale of the Terrace House Project.

Necessity for Stay Extension

12. The Petitioners seek an extension of the Stay of Proceedings to and including April 30 2021, to provide the Monitor with additional time to pursue alternative offers for the Terrace House Project and negotiate a Purchase and Sale Agreement or to secure commitments that would facilitate a Plan of Arrangement being put forward.

13. The extension of the Stay of Proceedings will allow the Monitor and Petitioners to maintain operational control and to preserve the Terrace House Project.

14. The Petitioners have acted and continue to act in these proceedings in good faith and with due diligence.

Necessity for an Increase in the DIP Facility

15. As set out in the Fourth Report of the Monitor, the Fourth Report Cash Flow Forecast prepared by the Monitor projects that the authorized borrowings under the DIP Facility are insufficient to pay obligations anticipated to arise over the proposed extension of the Stay of Proceedings.

16. Granting the increase to the DIP Facility will provide the Petitioners with the necessary time to work towards completing a transaction, and enhance a viable arrangement.

17. The benefits of increasing the facility outweigh the potential prejudice to creditors.

Part 3: LEGAL BASIS

1. The Petitioners rely on the CCAA, the Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court.

Stay Extension

2. Pursuant to s. 11.02(3) of the CCAA, the Court may extend the stay of proceedings for any period that the Court considers necessary provided that:

(a) the extension sought is appropriate in the circumstances; and

(b) the Petitioners have acted and are acting in good faith and with due diligence.

3. Since the Initial Order was pronounced on May 29, 2020, the Petitioners have acted and continue to act and operate in good faith and with due diligence.

4. The extension of the stay of proceedings is necessary to allow the Monitor to pursue alternative offers for the Terrace House Project and negotiate a Purchase and Sale Agreement or to secure commitments that would facilitate a Plan of Arrangement being put forward, and for the Petitioners and Monitor to maintain operational control and preserve the Terrace House Project.

5. Having regard to all the circumstances and the conditions outlined in s. 11.02(3) of the CCAA, the extension of the Stay of Proceedings to and including February 26, 2021 is reasonable and appropriate.

Interim Financing Increase

6. Pursuant to section 11.2(1) of the CCAA, on notice to secured creditors likely to be affected by the charge, the court may order that all or part of the property of the Petitioners be subject to a charge, in an amount the court considers appropriate, in favour of a person who agrees to lend to the debtor company an amount approved by the court.

7. The Court exercised this jurisdiction in granting the Interim Lender's Charge in the first instance. This authority combined with the Court's inherent jurisdiction pursuant to section 11 of the CCAA provides the Court with the ability to approve an increase.

8. Permitting an increase to the credit facility is necesssary and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. At the hearing of this Application, the Petitioners will rely on:

   (a) The Fourth Report of the Monitor to be filed; and

   (b) Such further material as counsel may advise and the Court may permit

The applicants estimate that the application will take 30 minutes.

☒ This matter is not within the jurisdiction of a master. Madam Justice Fitzpatrick is seized of this proceeding.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

   (i) you intend to refer to at the hearing of this application, and

   (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

   (i) a copy of the filed application response;

   (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

   (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: February 23, 2021

Signature of David E. Gruber
Lawyer for the Applicants

THIS NOTICE OF APPLICATION is prepared and delivered by David E. Gruber of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the applicants, File No. 090034.00001, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [gruberd@bennettjones.com]

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ____________ of Part 1 of this notice of application

☐ with the following variations and additional terms:

Dated: ______________________________

Signature of ☐ Judge ☐ Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

☐ discovery: comply with demand for documents

☐ discovery: production of additional documents

☐ other matters concerning document discovery

☐ extend oral discovery

☐ other matter concerning oral discovery

☐ amend pleadings

☐ add/change parties

☐ summary judgment

☐ summary trial

☐ service

☐ mediation

☐ adjournments

☐ proceedings at trial

☐ case plan orders: amend

☐ case plan orders: other

☐ experts

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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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
(Stay Extension and Interim Financing Increase Order)

BEFORE THE HONOURABLE	)	February 24, 2021
MADAM JUSTICE FITZPATRICK	)	

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 24th day of February 2021; AND ON HEARING David Gruber, counsel for the Petitioners and those other counsel and parties listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Fourth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, dated February 22, 2021; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE

1. The time for service of the Notice of Application filed February 22, 2021 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

STAY EXTENSION

2. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Order of this Court pronounced August 31, 2020 and December 1, 2020, is hereby continued and extended to and including April 30, 2021.

INCREASE OF INTERIM LENDING

3. The Petitioners are hereby authorized and empowered to enter into an amended and restated credit facility on substantially the same terms and conditions set forth in commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, provided that the cumulative borrowings under the Interim Facility as amended shall not exceed the principal amount of $1,500,000 unless permitted by further order of this court.

4. The Interim Lender shall be entitled to the benefits of the Interim Lender's Charge as defined in the ARIO with respect to the additional borrowing under the amended and restated credit facility, which Interim Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the amended and restated credit facility or the Definitive Documents.

5. Paragraphs 37 of the ARIO shall be amended as follows:

   37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "Interim Lender") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed <u>$1,500,000</u> unless permitted by further Order of this Court.

GENERAL

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

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 Gruber
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.

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*,

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AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF

PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

FOURTH REPORT OF THE MONITOR

ERNST & YOUNG INC.

FEBRUARY 23, 2021

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TO THE
FOURTH REPORT OF THE MONITOR

LISTING OF APPENDICES
TO THE
FOURTH REPORT OF THE MONITOR

INTRODUCTION

1. Port Capital Development (EV) Inc. (the "**General Partner**") and Evergreen House Development Limited Partnership ("**Evergreen LP**"), (each a "**Petitioner**", and collectively, the "**Petitioners**") own a real estate development project called the "**Terrace House Project**".

2. 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.

3. On May 29, 2020, this Honourable Court pronounced an Order (the "**Initial Order**") which, *inter alia*:

   a) appointed Ernst & Young Inc. ("**EY**") as monitor of the Petitioners (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**");

   b) granted a "**Stay of Proceedings**" to June 8, 2020 (the "**Stay Period**"); and

   c) granted the Monitor "**Enhanced Powers**" to execute control over the Petitioners and to explore restructuring opportunities for the Terrace House Project and administer a "dual-track" sale and investment solicitation process (the "**SISP**") to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House.

4. On June 8, 2020, this Honourable Court granted an order amending the Initial Order (the "**Amended and Restated Initial Order**" or "**ARIO**") that among other things:

   a) extended the Stay Period to and including September 3, 2020;

   b) approved the DIP Commitment Letter and the DIP Lender's Charge (both as defined in the First Report).

5. On December 1, 2020, this Honourable Court granted an order that among other things:

   a) extended the Stay Period to and including February 26, 2021;

b) approved the Monitor’s execution of the Bid Offer Agreement (as defined herein); and

c) approved the Break Fee (as defined herein) on the terms and conditions provided in the Bid Offer Agreement.

6. The Stay Period is currently set to expire on February 26, 2021.

7. The Monitor has previously filed four reports in these CCAA proceedings: the “**Proposed Monitor’s Report**”, the “**First Report**”, the “**Second Report**”, and the “**Third Report**”. These reports are posted on the Monitor’s website at www.ey.com/ca/terracehouse.

8. The purpose of this “**Fourth Report**” is to provide information to this Honourable Court with respect to the following:

a) activities of the Monitor since the Third Report;

b) an update on the SISP;

c) the budget to actual analysis from November 1, 2020 through to February 19, 2021 (covering the Third Report Forecast);

d) an updated cash flow forecast for the Petitioners;

e) the DIP Facility and request for an Order approving an increase to the DIP Lender’s Charge from $1,250,000 to $1,500,000;

f) a request for an extension to the Stay Period to April 30, 2021; and

g) the Monitor’s conclusions and recommendation.

TERMS OF REFERENCE

9. In preparing this Fourth Report and making the comments herein, the Monitor has been provided with and 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 Fourth Report in respect of the Cash Flow Forecast:

   a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the 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 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 Fourth 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.

10. Future oriented financial information referred to in this Fourth Report was prepared based on Management's and the Monitor'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.

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

12. All capitalized terms used herein that are undefined have the meanings ascribed thereto in the Proposed Monitor’s Report, the First Report, the Second Report, the Third Report and the Amended and Restated Initial Order.

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

CONDENSED BACKGROUND INFORMATION

14. The background of the Terrace House Project and the cause of insolvency of the Petitioners is detailed in the previous reports the Monitor has prepared for this Honourable Court and are not repeated herein.

15. 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-used 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.

16. 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.

17. A three (3) level parkade and structure for the first level of the building comprising the Terrace House Project are substantially complete and the underground services (i.e. electrical and

mechanical) have been installed. Construction on the remainder of the building has not yet started.

18. CMLS Financial Ltd ("**CMLS**") is the Terrace House Project's 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 indebtedness on the Construction Loan was approximately $20.1 million at the start of these CCAA Proceedings.

19. Aviva Insurance Company of Canada ("**Aviva**" and together with CMLS, the "**Secured Creditors**") provided a deposit protection insurance facility to permit the Petitioners to have access to the pre-sale purchasers' deposit monies for the payment of project costs. Management estimated that approximately $14.7 million would be owing pursuant to Aviva's insurance deposit facility contingent upon the return of deposits to the pre-sale purchasers. Total secured indebtedness of the Petitioners owed to the Secured Creditors is approximately $34.8 million, as described above. Additionally, Management estimates that there are approximately $4.0 million in lien claimants and $2.3 million in unsecured creditors. The unsecured indebtedness and lien claimants of the Petitioners primarily consist of amounts owing on account of trade debt, property taxes and unpaid professional firms and consultants fees.

20. The "**Building Permit**" issued by the City of Vancouver with respect to the Terrace House Project was to expire on January 3, 2021. The Monitor has obtained an extension to the Building Permit to July 5, 2021.

ACTIVITIES OF THE MONITOR SINCE THE THIRD REPORT

21. This Honourable Court provided the Monitor with Enhanced Powers to execute control over the Petitioners and to explore restructuring opportunities for the Terrace House Project and administer a SISP to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House. To that end, since the date of the Third Report, the Monitor has, *inter alia*:

a) managed the site preservation of the Terrace House Project, including payment to vendors and suppliers with respect to post-filing activity;

b) managed the cash flows of the Petitioners, prepared reporting packages and corresponded with the DIP Lender with respect to the DIP Facility;

c) obtained an extension of property insurance for the Terrace House Project;

d) assisted with due diligence procedures of the Selected Offeror (defined below) pursuant to the Bid Offer Agreement, as described in detail herein;

e) reviewed and considered the Confidential Feasibility Study (as defined herein);

f) participated in meetings and telephone discussions with the Terrace House Project's Secured Creditors;

g) responded to numerous inquiries from various financial stakeholders of the Terrace House Project as well as other third parties; and

h) prepared this Fourth Report.

UPDATE ON THE SALE INVESTMENT AND SOLICITATION PROCESS

22. On May 29, 2020 this Honourable Court granted the Initial Order which authorized the Monitor to administer a two-phased SISP to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House Project.

23. The Second Report and the Third Report provide extensive detail on the administration of the SISP that resulted in six (6) offers to acquire or refinance the Terrace House Project (the “**Qualified Offerors**”). The Monitor filed copies of the these offers under seal in the Confidential Supplement to the Third Report.

24. Following consultation with the Secured Creditors, the Monitor executed a “**Bid Offer Agreement**” on behalf of the Petitioners with Bosa Properties (OC) Inc. (the “**Bid Offeror**”), the execution of which was approved by this Honourable Court on December 1, 2020. The Monitor filed the Bid Offer Agreement in the Confidential Supplement to the Third Report.

25. The Third Report noted that the Bid Offer Agreement was conditional in nature only and set out the framework of the initial main business terms for a purchase and sale agreement for the Terrace House Project (a “**Formal Agreement**”). The Bid Offer Agreement provided the Bid Offeror a 75-day period (the “**Due Diligence Period**”) to complete a satisfactory feasibility study and due diligence analysis relating to the economics of the Terrace House Project and to obtain construction financing.

26. Throughout the Due Diligence Period, the Monitor made itself available to respond to questions, facilitated document requests, and coordinated site visits to assist with the due diligence procedures of the Bid Offeror.

27. On February 16, 2021, the Bid Offeror provided the Monitor with the feasibility study (the “**Confidential Feasibility Study**”) on the Terrace House Project and put forward a proposal that varied from the Bid Offer. On February 17, 2021, the Monitor convened a videoconference with the Bid Offeror and the Secured Creditors to discuss the Confidential Feasibility Study, to review the Bid Offeror’s proposal, and to consider the path forward for the Terrace House Project.

28. Given these circumstances, the Monitor is continuing to consult with the Secured Creditors and other stakeholders and intends to re-approach one or more of the Qualified Offerors under a further bid process to solicit their interest in putting forward their best cash offers.

29. The Monitor seeks an extension of the Stay of Proceedings from February 26, 2021 to April 30, 2021 to enable this process and these discussions to occur.

THIRD CASH FLOW FORECAST BUDGET TO ACTUALS

30. Appendix "C" of the Third Report contained a weekly cash flow projection for the Petitioners (the "**Third Report Cash Flow Forecast**") for the period of November 21, 2020 to February 26, 2021.

31. The table below provides a variance analysis of the actual cash flow activity versus the Third Report Cash Flow Forecast for the period of November 21, 2020 to February 19, 2021.

	Projection	**Actuals**	**Variance**
Beginning Cash	**50,659**	**50,659**	**-**
Receipts	**-**	**-**	**-**
Disbursements			
Insurance	(21,320)	-	21,320
Site preservation	(38,282)	(42,129)	(3,847)
Glass storage costs	(19,647)	(19,647)	-
Consultants – city requirements	(9,390)	(8,449)	941
Crane Lease	(24,255)	(16,170)	8,085
Permit Costs	(4,965)	(9,434)	(4,469)
General, admin & miscellaneous	(34,667)	(36,084)	(1,417)
Restructuring costs	(290,000)	(159,554)	130,446
Brokerage work fee	(36,750)	(36,750)	-
DIP interest, legal and commitment fee	(28,384)	(21,518)	6,866
Contingency	(60,000)	-	60,000
Total Disbursements	**(567,660)**	**(349,735)**	**217,925**
Ending Cash before DIP Financing	(517,001)	(299,076)	217,925
DIP Draw	543,384	300,000	(243,384)
Ending Cash	**26,383**	**924**	**(25,459)**

32. Broadly speaking, the positive variance in disbursements noted above is attributable to timing differences and spending restraint.

FOURTH CASH FLOW FORECAST

33. The Monitor, on behalf of the Petitioners, has prepared a weekly cash flow projection (the **"Fourth Report Forecast"**) for the period of February 20, 2021 to April 30, 2021 (the "**Fourth Report Cash Flow Period**").

34. A copy of the Fourth Report Forecast along with its notes and assumptions are attached hereto as **Appendix "A"** and is summarized and compared to actual expenses incurred below:

	Actual	**Actual**	**Forecast**
	May 29 to December 1	**December 2 to February 19**	**February 20 to April 30**
Beginning Cash	**-**	**50,659**	**924**
Receipts	**-**	**-**	**209,139**
Disbursements	**(649,341)**	**(349,735)**	**(701,716)**
Insurance	(61,991)	-	(152,940)
Site preservation	(61,495)	(42,129)	(29,875)
Glass storage	(26,195)	(19,647)	(19,647)
Consultants – city requirements	(9,955)	(8,449)	(5,970)
Crane lease	(48,510)	(16,170)	(16,170)
Permit costs	(7,137)	(9,434)	(2,088)
General, admin & misc	(43,922)	(36,084)	(37,771)
Contingency	-	-	(123,000)
Restructuring costs	(331,073)	(159,554)	(239,157)
Brokerage work fee	-	(36,750)	-
DIP interest & fee payments	(59,063)	(21,518)	(75,098)
Total Cash before DIP Financing	**(649,341)**	**(299,076)**	**(491,653)**
DIP Financing Draw	700,000	300,000	500,000
Ending Cash after DIP Financing	**50,659**	**924**	**8,347**

35. Cash receipts contemplated in the Fourth Report Forecast are comprised of the following:

a) an estimated refund of $34,139 for GST paid on disbursements incurred during these CCAA proceedings; and

b) an estimated refund of $175,000 for a deposit held by BC Hydro for design fees associated with a proposed electrical system for the Terrace House Project.

36. Restructuring costs contemplated in the Fourth Report Forecast include the payment of professional fees of the Monitor, the Monitor's legal counsel, and the Petitioner's legal counsel some of which relate to services already rendered.

37. The Fourth Report Forecast contemplates payments of $76,470 for insurance premiums through March 31, 2021 and an additional payment of $76,470 to extend the insurance policies beyond March 31, 2021 (as required).

38. The Fourth Report Forecast does not contemplate any cash outlay for construction costs, other than those required for site preservation.

THE DIP FACILITY

39. On June 8, 2020, this Honourable Court approved a "**Commitment Letter**" issued by Desjardins Financial Security Life Assurance Company (the "**DIP Lender**") to provide a debtor-in-possession financing facility (the "**DIP Facility**") to the Petitioners. The maximum amount permitted to be borrowed under the Commitment Letter is $1,250,000 unless permitted by further order of this Court. A related charge in the same amount (the "**DIP Lender's Charge**") was granted by this Honourable Court with respect to the DIP Facility.

40. The Monitor notes that the DIP Facility was intended to fund the costs of the within proceedings through to September 3, 2020. Through cost reduction measures, the Monitor has been able to extend this DIP Facility to cover the costs incurred during these proceedings through to the expiry of the current Stay Period.

41. To date, the Petitioners have drawn $1 million under the existing approved DIP Facility of $1,250,000. The Fourth Report Forecast that is summarized above projects that the Petitioners will require continued access to the DIP Facility in the gross amount of $1,500,000; and accordingly, the Monitor, on behalf of the Petitioners, is seeking an Order which

authorizes the Petitioners to borrow up to $1,500,000 under the DIP Facility and to increase the DIP Charge by $250,000 to $1,500,000 million. The Monitor has confirmed with the DIP Lender that it is prepared to continue to loan funds to the Petitioners on the terms and subject to the conditions set forth in the Commitment Letter, subject to such amendments as may be reasonably necessary to accommodate the proposed stay extension, and to increase the maximum amount permitted to be borrowed under that Commitment Letter from $1,250,000 to $1,500,000.

REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS

42. The Stay Period is currently set to expire on February 26, 2021. The Monitor on behalf of the Petitioners is requesting an extension of the Stay Period until April 30, 2021, being the approximate anticipated timeframe for the completion of the steps identified in paragraph 28 herein.

43. The Monitor has considered the onus that resides with the Petitioners to demonstrate that an extension of the Stay of Proceedings by this Honourable Court is warranted, having regard to:

a) the circumstances that justify the making of an extension order;

b) the good faith efforts of the Petitioners to effect the restructuring; and

c) the due diligence with which the Petitioners are advancing the restructuring.

<u>Circumstances that justify the extension sought</u>

44. In the Monitor's view, the extension of the Stay of Proceedings is necessary in order to:

a) administer the above noted process to seek a transaction for the Terrace House Project; and

b) maintain operational control and preserve the Terrace House Project.

45. Moreover, as is depicted in the Fourth Report Cash Flow Forecast, the Monitor projects that the Petitioners will have sufficient liquidity and cash on hand to fund their ongoing obligations through April 30, 2021 should this Honourable Court grant an order authorizing the Petitioners to borrow up to $1,500,000 under the DIP Facility and increasing the DIP Lender's Charge to this same amount.

Good Faith Efforts and Due Diligence

46. The Monitor, in conjunction with the Petitioners, have been working in good faith and with due diligence on a plan to identify, if possible, a buyer or investor for the Terrace House Project.

47. The Petitioners have complied with all of the requirements under the CCAA, as well as the various orders granted by this Honourable Court in this proceeding.

48. For the foregoing reasons, the Monitor supports the Petitioners' request for an order extending the Stay Period to April 30, 2021.

CONCLUSIONS AND RECOMMENDATIONS

49. Based on the foregoing, the Monitor recommends that this Honourable Court grant Order(s) approving the following:

a) extending the Stay Period from February 26, 2021 to April 30, 2021;

b) authorizing the Petitioners to borrow up to $1,500,000 under the DIP Facility; and

c) approving an increase to the DIP Lender's Charge to $1,500,000.

All of which is respectfully submitted this 23rd day of February, 2021.

ERNST & YOUNG INC.
in its capacity as 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

Appendix A

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 February 20, 2021 to April 30, 2021
$CAD

	Week Ending	1 26-Feb-21 Forecast	2 5-Mar-21 Forecast	3 12-Mar-21 Forecast	4 19-Mar-21 Forecast	5 26-Mar-21 Forecast	6 2-Apr-21 Forecast	7 9-Apr-21 Forecast	8 16-Apr-21 Forecast	9 23-Apr-21 Forecast	10 30-Apr-21 Forecast	Total
Receipts												
Refund from BC Hydro	1	-	-	-	-	175,000	-	-	-	-	-	**175,000**
GST Refund	2	-	-	-	-	-	34,139	-	-	-	-	**34,139**
		-	**-**	**-**	**-**	**175,000**	**34,139**	**-**	**-**	**-**	**-**	**209,139**
Disbursements												
Insurance	3	(76,470)	-	-	-	-	-	-	-	(76,470)	-	**(152,940)**
Site preservation	4	-	(5,413)	(3,000)	-	-	(10,731)	-	-	-	(10,731)	**(29,875)**
Glass storage costs	5	-	(6,549)	-	-	-	(6,549)	-	-	-	(6,549)	**(19,647)**
Consultants - city requirements	6	-	(1,500)	-	-	-	(2,235)	-	-	-	(2,235)	**(5,970)**
Crane lease	7	-	(8,085)	-	-	-	(8,085)	-	-	-		**(16,170)**
Permit costs	8	-	-	-	-	(2,088)	-	-	-	-	-	**(2,088)**
General, admin & miscellaneous expenses	9	(1,473)	(8,899)	(2,000)	(4,250)	(8,899)	(2,000)	(2,000)	(4,250)	(2,000)	(2,000)	**(37,771)**
Contingency	10	-	(3,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	**(123,000)**
		(77,943)	**(33,447)**	**(20,000)**	**(19,250)**	**(25,987)**	**(44,600)**	**(17,000)**	**(19,250)**	**(93,470)**	**(36,515)**	**(387,462)**
Restructuring Disbursements												
Restructuring costs	11	-	(139,157)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	**(239,157)**
Brokerage work fee	12	-	-	-	-	-	-	-	-	-	-	**-**
		-	**(139,157)**	**(12,500)**	**(12,500)**	**(12,500)**	**(12,500)**	**(12,500)**	**(12,500)**	**(12,500)**	**(12,500)**	**(239,157)**
Net Cash Flow		**(77,943)**	**(172,604)**	**(32,500)**	**(31,750)**	**136,513**	**(22,961)**	**(29,500)**	**(31,750)**	**(105,970)**	**(49,015)**	**(417,480)**
Cash Balance												
Opening Available Cash Balance		924	172,981	378	(32,122)	36,128	172,640	149,679	120,179	163,332	57,362	**924**
Net Cash Flow		(77,943)	(172,604)	(32,500)	(31,750)	136,513	(22,961)	(29,500)	(31,750)	(105,970)	(49,015)	**(417,480)**
DIP Draw/(Payback)		250,000	-	-	100,000	-	-	-	74,903	-		**424,903**
Closing Available Cash Balance		**172,981**	**378**	**(32,122)**	**36,128**	**172,640**	**149,679**	**120,179**	**163,332**	**57,362**	**8,347**	**8,347**
DIP Balance												
Opening Balance		1,000,000	1,281,300	1,299,248	1,302,238	1,405,235	1,408,469	1,411,711	1,414,960	1,493,119	1,496,555	**1,000,000**
Draw/(Payback)		250,000	-	-	100,000	-	-	-	74,903	-	-	**424,903**
Legal Fees	13	-	15,000	-	-	-	-	-	-	-	-	**15,000**
Commitment Fee		-	-	-	-	-	-	-	-	-	-	**-**
DIP Interest	13	31,300	2,949	2,990	2,997	3,234	3,241	3,249	3,256	3,436	3,444	**60,097**
DIP Balance		**1,281,300**	**1,299,248**	**1,302,238**	**1,405,235**	**1,408,469**	**1,411,711**	**1,414,960**	**1,493,119**	**1,496,555**	**1,499,999**	**1,500,000**

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**"). Ernst & Young Inc., in its capacity as the Monitor of the Petitioners (the "**Monitor**"), with the assistance of the Petitioners, 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 obtain a stay of proceedings under the CCAA until April 30, 2021. The Cash Flow Forecast covers the period from February 20, 2021 to April 30, 2021 (the "**Period**").

1. **Refund from BC Hydro**: an estimated refund for a deposit held by BC Hydro for design fees associated with a proposed electrical systems for the Terrace House Project.

2. **GST Refund**: The estimated refund for GST paid on disbursements incurred during these CCAA proceedings.

3. **Insurance:** Amount has been estimated for a renewal of site specific insurance policies.

4. **Site Preservation:** Includes site security, scaffolding and fence rental and other items related to site preservation.

5. **Glass Storage Costs**: Costs associated with the storage of acquired glass and related materials.

6. **Consultants – City Requirements**: Represents management's estimates of required cash outlay to meet basic city requirements.

7. **Crane Lease** – Costs associated with the lease for the crane that remains on site.

8. **Permit Costs –** Costs associated with City of Vancouver permitting required for site preservation.

9. **General, Admin & Miscellaneous Expenses**: Includes equipment repairs & maintenance, office expenses, showroom lease costs and other miscellaneous items. These have been estimated based on historical run rates.

10. **Contingency:** A small weekly contingency is built into the Cash Flow Forecast for unforeseen expenses.

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

12. **Brokerage Fee:** Represents fees paid to a brokerage firm to market and solicit offers pursuant to the sale and investment solicitation process.

13. **DIP Interest and Fees:** Interest, legal, and other fees associated with the DIP facility.

available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

2019, ch. 29, art. 136.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;

b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de dix jours qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F); 2019, c. 29, s. 137.

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Suspension : demandes autres qu'initiales

(2) Dans le cas d'une demande, autre qu'une demande initiale, visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime des lois mentionnées à l'alinéa (1)a);

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Preuve

(3) Le tribunal ne rend l'ordonnance que si :

a) le demandeur le convainc que la mesure est opportune;

b) dans le cas de l'ordonnance visée au paragraphe (2), le demandeur le convainc en outre qu'il a agi et continue d'agir de bonne foi et avec la diligence voulue.

Restriction

(4) L'ordonnance qui prévoit l'une des mesures visées aux paragraphes (1) ou (2) ne peut être rendue qu'en vertu du présent article.

2005, ch. 47, art. 128, 2007, ch. 36, art. 62(F); 2019, ch. 29, art. 137.

Suspension — administrateurs

11.03 (1) L'ordonnance prévue à l'article 11.02 peut interdire l'introduction ou la continuation de toute action contre les administrateurs de la compagnie relativement aux réclamations qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de la compagnie dont ils peuvent être, ès qualités, responsables en droit, tant que la transaction ou l'arrangement, le cas échéant, n'a pas été homologué par le tribunal ou rejeté par celui-ci ou les créanciers.

before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

organisme administratif, ni aux investigations auxquelles il procède à son sujet. Elles n'ont d'effet que sur l'exécution d'un paiement ordonné par lui ou le tribunal.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Exception

(3) Le tribunal peut par ordonnance, sur demande de la compagnie et sur préavis à l'organisme administratif et à toute personne qui sera vraisemblablement touchée par l'ordonnance, déclarer que le paragraphe (2) ne s'applique pas à l'une ou plusieurs des mesures prises par ou devant celui-ci, s'il est convaincu que, à la fois :

a) il ne pourrait être fait de transaction ou d'arrangement viable à l'égard de la compagnie si ce paragraphe s'appliquait;

b) l'ordonnance demandée au titre de l'article 11.02 n'est pas contraire à l'intérêt public.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer, par ordonnance, sur demande de la compagnie et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

1997, ch. 12, art. 124; 2001, ch. 9, art. 576; 2005, ch. 47, art. 128; 2007, ch. 29, art. 106, ch. 36, art. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

11.11 [Abrogé, 2005, ch. 47, art. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the

Priorité — autres ordonnances

(3) Il peut également y préciser que la charge ou sûreté n'a priorité sur toute autre charge ou sûreté grevant les biens de la compagnie au titre d'une ordonnance déjà consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 36, s. 65; 2019, c. 29, s. 138.

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

rendue en vertu du paragraphe (1) que sur consentement de la personne en faveur de qui cette ordonnance a été rendue.

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la durée prévue des procédures intentées à l'égard de la compagnie sous le régime de la présente loi;

b) la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;

c) la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;

d) la question de savoir si le prêt favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

e) la nature et la valeur des biens de la compagnie;

f) la question de savoir si la charge ou sûreté causera un préjudice sérieux à l'un ou l'autre des créanciers de la compagnie;

g) le rapport du contrôleur visé à l'alinéa 23(1)b).

Facteur additionnel : demande initiale

(5) Lorsqu'une demande est faite au titre du paragraphe (1) en même temps que la demande initiale visée au paragraphe 11.02(1) ou durant la période visée dans l'ordonnance rendue au titre de ce paragraphe, le tribunal ne rend l'ordonnance visée au paragraphe (1) que s'il est également convaincu que les modalités du financement temporaire demandé sont limitées à ce qui est normalement nécessaire à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

1997, ch. 12, art. 124; 2005, ch. 47, art. 128; 2007, ch. 36, art. 65; 2019, ch. 29, art. 138.

Cessions

11.3 (1) Sur demande de la compagnie débitrice et sur préavis à toutes les parties au contrat et au contrôleur, le tribunal peut, par ordonnance, céder à toute personne qu'il précise et qui y a consenti les droits et obligations de la compagnie découlant du contrat.

Exceptions

(2) Le paragraphe (1) ne s'applique pas aux droits et obligations qui, de par leur nature, ne peuvent être cédés ou qui découlent soit d'un contrat conclu à la date à laquelle une procédure a été intentée sous le régime de la