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

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE MADAM JUSTICE FITZPATRICK	))	25/May/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 25th day of May 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 Sixth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed ("**Sixth Report**") and the Confidential Supplement to the Sixth Report; 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:

1. The sale transaction (the "**Transaction**") contemplated by the Purchase and Sale Agreement dated May 13, 2021 (the "**Sale Agreement**") between the Petitioners and Solterra Acquisitions Corp. (the "**Purchaser**"), a copy of which is attached as Appendix "A" to the Confidential Supplement to the Sixth Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Petitioners is hereby authorized and approved, and the Petitioners are hereby authorized and directed to take such additional steps and execute such additional documents as may

be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

2. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule "B" hereto (the "**Monitor's Certificate**"), the following shall occur and be deemed to have occurred on the Closing Date in the following sequence:

   (a) First, the Monitor shall incorporate a subsidiary of Port Capital Development (EV) Inc. ("**Residual Co**") which shall be added as a Petitioner in these CCAA Proceedings pursuant to paragraph 10 herein;

   (b) Second, all of the Petitioners right, title and interest in and to the Excluded Assets as defined in the Sale Agreement, shall vest absolutely and exclusively in Residual Co, and any and all Claims and Encumbrances shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

   (c) Third, all of the Petitioners' right, title and interest in and to the Purchased Assets as described at section 1.1(rr)(i) in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated June 8, 2021 (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets;

   (d) Fourth, Port Capital Development (EV) Inc. shall cease to be a Petitioner in these CCAA Proceedings and shall be deemed released from the purview of all Orders of this Court granted in respect of these CCAA Proceedings, save and accept for this Order.

3. Upon presentation for registration in the Land Title Office for the Land Title District of Vancouver of a certified copy of this Order, together with a letter from Bennett Jones LLP, solicitors for the Petitioners, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

(a) enter the Purchaser as the owner of the Lands, as identified in Schedule "E" hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

(b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule "D".

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

6. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Petitioners to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "D".

7. The Monitor, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

8. Notwithstanding:

(a) these proceedings;

(b) any applications for a bankruptcy order in respect of the Petitioners now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Petitioners,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners and shall not be void or voidable by creditors of the Petitioners, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. As of the Closing Date and in the sequence set out in paragraph 2 herein:

   (a) Residual Co shall be a company to which the CCAA applies;

   (b) The Corporate Entity referred herein as Residual Co shall be added as a Petitioner in these CCAA Proceedings and all references in any Order of this Court in respect of these CCAA Proceedings to (i) the "Petitioners" shall refer to and include Residual Co as defined in the Monitor's Certificate, *mutatis mutandis,* and (ii) "Property" shall refer to and include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residual Co; and

   (c) and The Monitor shall be exempt from compliance with section 23(1)(a) of the CCAA with respect to Residual Co.; provided, however, that, within five days of the Closing Date, the Monitor shall make this Order publically available in the manner prescribed under the CCAA.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

11. The Monitor or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

12. 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
☐ Party ☑ 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.

Schedule B – Monitors Certificate

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MONITOR'S CERTIFICATE

A. By order made May 29, 2020, this Court appointed Ernst & Young Inc. as monitor (the "**Monitor**") of each of the Petitioners pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-46 (as amended, the "**CCAA**").

B. Pursuant to an order of the Court dated • (the "**Approval and Vesting Order**"), the Court approved the sale of the Purchased Assets to •. (the "**Purchaser**"), providing for the vesting in the Purchaser of all of the Petitioners' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order.

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has incorporate Residual Co in accordance with the Approval and Vesting Order. Residual Co shall here after refer to as •.

2. The Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Purchaser and Vendor that all conditions of Closing have been satisfied or waived by the applicable Parties.

3. The Monitor has received the Purchase Price.

This Certificate was delivered by the Monitor at [TIME] on _ 2021.

13. ERNST & YOUNG INC.,
in its capacity as the Monitor of the Petitioners,
and not in its personal capacity:

Per: ______________________________

Name:

Schedule C - Claims to be deleted/expunged from title to Real Property

Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to Real Property

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown of any of the Lands and the statutory exceptions to title currently applicable to the Lands;

2. A claim of right, title or jurisdiction which may be made or established by any aboriginal peoples by virtue of their status as aboriginal peoples to or over any Lands;

3. Liens for taxes, assessments, rates, duties, charges or levies not at the time due, which related to obligations or liabilities assumed by the Purchaser.

4. The encumbrances listed below with respect to the Lands:

   a) Easement No. BP238635

   b) Restrictive Covenant No. R18424

   c) Easement and Indemnity Agreement No. J7909

   d) Easement No. BP238634

Schedule "E" – Legal Description of Lands

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

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