No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

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

NOTICE OF APPLICATION

Name of applicant: 1296371 B.C. Ltd. (the "**Applicant**")

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on May 25, 2021 at 10:00 a.m., by MS Teams, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order, substantially in the form attached as Schedule A hereto, providing for the following relief (capitalized terms have the meaning ascribed to them herein):

   (a) authorizing and directing Dentons Canada LLP to pay $8,005,201, representing the Deposits held on behalf of the Pre-Sale Purchasers, to the Applicant on the following terms:

      (i) the Deposits shall be paid directly to CMLS for the purposes of repaying the CMLS Facility, as contemplated herein, and such payment shall constitute an advance of a loan by the Applicant to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(ii) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by the Applicant to Dentons Canada LLP, in trust, which amounts shall be held *pro rata* on behalf of each Pre-Sale Purchaser on the same terms as the Deposits were originally held;

(b) approving the loans from Domain, NumberCo and the Applicant (collectively, the "**New Lenders**") to the Petitioners (the "**New Loan Facility**"), for the purposes of allowing the Petitioners to repay the Interim Financing Facility and assign CMLS Facility and CMLS Security to the New Lenders;

(c) approving the repayment of the Interim Financing Facility, and upon repayment thereof, discharging and releasing the Interim Financing Security for all purposes;

(d) approving the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders, on such terms as the New Lenders and CMLS may agree, and upon repayment thereof;

(e) authorizing the Petitioners and the New Lenders to enter into an agreement to amend the CMLS Security to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders, and confirming the priority of the CMLS Security, as amended by the Amending Agreements, over all other creditors of the Petitioners;

(f) amending the Initial Order to:

(i) permit enforcement of the New Loan Facility and CMLS Security (as assigned), notwithstanding the stay of proceedings;

(ii) prohibit further interim financing without the consent of Domain;

(iii) remove the expanded powers granted to the Monitor in respect of the Borrowers, other than those expressly contemplated by the *Companies Creditors' Arrangement Act*; and

(iv) prohibits any further step in the CCAA Proceedings without the consent of Domain; and

(g) extending the stay of proceedings by six months, to and including December 11, 2021; and

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

Part 2: FACTUAL BASIS

Background

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

2. The Terrace House Project is an ongoing development project located at 1250 West Hastings Street, Vancouver, BC, on lands legally described as:

   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

   (the "**Lands**").

3. The Petitioners are subsidiaries of Port Capital Group Inc. ("**Port Capital Group**"), which is in the business of real estate development primarily in British Columbia, but also in Toronto, Ontario.

4. Macario Teodoro Reyes ("**Reyes**") is a director and officer of Port Capital Group and the General Partner. Reyes is also:

   (a) A covenantor on the Petitioners' first mortgage and guarantor of the Petitioners' second mortgage in favour of the Terrace House Project's insurer; and

   (b) A covenantor or guarantor to most credit facilities advance by the Port Capital Group's various project specific limited partnerships and general partners.

5. The Applicant, 1296371 B.C. Ltd., is a company incorporated for the purpose of making the herein described loan. Reyes is a director and officer of the Applicant.

6. Domain Mortgage Company ("**Domain**") is a lender who is arm's length from Reyes, the Applicant and the Petitioners.

7. 1260780 B.C. Ltd. ("**NumberCo**") is a company controlled by Luz Consuelo Reyes, who is one of the Pre-Sale Purchasers (defined below) and is related to Reyes.

8. The following persons (collectively, the "**Pre-Sale Purchasers**") have entered into pre-sale purchase agreements with the Petitioners (collectively, the "**Pre-Sale Purchase Agreements**"), and have paid the following deposit amounts totaling $8,005,201

(collectively, the "**Deposits**") to Dentons Canada LLP ("**Dentons**"), in trust, pursuant to such Pre-Sale Purchase Agreements:

(a) Luz Consuelo Reyes, who has paid a deposit in the amount of $2,800,000;

(b) 1192706 B.C. Ltd. ("**1192706**"), who has paid a deposit in the amount of $1,155,000;

(c) 1208596 B.C. Ltd. ("**1208596**"), who has paid deposits in the amount of $975,201;

(d) 1301981 B.C. Ltd., as assignee from Hudani Investment Corp., who has paid a deposit in the amount of $1,162,500;

(e) 1207867 B.C. Ltd., who has paid a deposit in the amount of $645,000;

(f) Robert Davis, who has paid a deposit in the amount of $592,500; and

(g) Simon Wong, who has paid a deposit in the amount of $675,000.

CCAA Proceedings

9. 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 [***CCAA***].

10. The Initial Order included a stay of proceedings (the "**Stay of Proceedings**") effective until June 8, 2020 and appointed Ernst & Young, Inc. as monitor (in that capacity, the "**Monitor**"). The Stay of Proceedings has since been extended to June 11, 2021.

11. On June 8, 2020, the Petitioners obtained an amended and restated initial order in these proceedings (the "**ARIO**"). Among other things, the ARIO approved an interim financing facility (the "**Interim Lender Facility**") from Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") and granted a related interim lender's charge (the "**Interim Lender's Charge**").

Encumbrances on the Lands and Creditors

12. Under the Initial Order and the ARIO, the Monitor, among others, was granted a first priority charge against the Lands, which must not exceed $250,000.00 (the "**Administration Charge**").

13. Pursuant to the ARIO (as amended), the Interim Lender was authorized to extend the Interim Lender Facility and was granted the Interim Lender's Charge, capped at

$1,500,000.00. As of May 21, 2021, the amount owed to the Interim Lender is estimated to be $1,287,274.88.

14. CMLS Financial Ltd. ("**CMLS**") provided construction financing for the Terrace House Project (the "**CMLS Facility**") and holds security over all property and assets of the Petitioners for payment thereof (the "**CMLS Security**"). With the exception the Administration Charge and the Interim Lender's Charge, CMLS the senior secured creditor. As of May 21, 2021, the amount owed to CMLS is estimated to be $21,233,416.87.

15. Aviva Insurance Company of Canada ("**Aviva**") provided a deposit protection insurance facility to permit the Petitioners to have access to certain pre-sale purchasers' deposit monies for the payment of project costs. Aviva has second ranked security against the assets of the Petitioners, subject to the CMLS Security.

16. In addition, the Petitioners have lien claimants that are estimated to total $4.0 million and unsecured creditors that are estimated to total $2.3 million (the "**Other Creditors**").

Redemption Financing

17. The Applicant, together with Domain and NumberCo, seek to provide funding to the Petitioner to allow it to repay the Interim Financing Facility, and for the New Lenders to acquire the CMLS Facility and CMLS Security. The New Loan Facility is comprised of the following parts:

    (a) a loan from Domain to the Petitioners, in the amount of $14.5 million, pursuant to a commitment letter dated May 11, 2021 (the "**Domain Commitment Letter**");

    (b) a loan from NumberCo to the Petitioners, in the amount of $1.5 million, pursuant to a commitment letter and acknowledgment dated May 7, 2021; and

    (c) a loan from the Applicant to the Petitioners, funded by a release of the Deposits held in trust by Dentons.

18. The New Loan Facility provides available funding (net of holdbacks contemplated by the Domain Commitment Letter) in the amount of approximately $22.5 million. This will facilitate full repayment of the Interim Lending Facility, and substantial repayment of the CMLS Facility.

19. Repayment of the New Loan Facility will be made, firstly, to Domain, secondly, to NumberCo, and lastly, to the Applicant. In accordance with the orders sought herein, upon repayment of the amount owing the Applicant, such amount will be returned to

Dentons, in trust, to continue to be held as deposits under the Pre-Sale Purchase Agreements.

20. The majority of the conditions to the Domain Commitment Letter have been satisfied. Currently, the key conditions which remain unsatisfied under the Domain Commitment Letter include:

    (a) this Honourable Court granting the Order sought in this Application;

    (b) Domain successfully offering the New Loan Facility as a syndicated mortgage investment to private mortgage investors;

    (c) the consent of Aviva to the transfer and assignment of the CMLS Facility and the CMLS Security to the New Lenders; and

    (d) CMLS executing an assignment and transfer agreement with respect to the purchase and assignment of the CMLS Facility and CMLS Security.

21. The Applicant is working with Domain, CMLS and Aviva to ensure that, at the time this Application is heard, the only remaining condition is approval by this Honourable Court.

22. The NumberCo commitment letter is unconditional. The advance contemplated by this commitment letter is currently being held by Dentons, in trust.

23. The Applicant was incorporated to facilitate the advance of the Deposits to allow the assignment of the CMLS Security. Each of the Pre-Sale Purchasers have executed irrevocable directions to pay (the "**Irrevocable Directions**"), authorizing the use of their deposits in the transaction contemplated above.

24. Each of the Irrevocable Directions expressly contemplate the transaction described above, and are conditional on:

    (a) consent of the Monitor (on behalf of the Petioners), CMLS and the Interim Lender;

    (b) execution of a purchase and assignment agreement to allow the Applicant to acquire the loans made by CMLS and the Interim Lender; and

    (c) necessary approvals by this Honourable Court.

25. The requirement for consent by the Interim Lender is now irrelevant, given the intention to pay out this amount in full, and to secure the advances associated therewith by the CMLS Security.

26. In addition, the Irrevocable Directions granted by 1192706 and 1208596 are conditional on review of documentation. The Applicant is working with these parties and their counsel, Clark Wilson LLP, to ensure this condition is satisfied at the time this Application is heard.

Restructuring Plan

27. The Applicant's offer is a refinancing, it is not seeking to terminate any pre-sale contracts or vest off or compromise any claims against the Petitioners.

28. The transaction is designed to create an opportunity to secure new construction financing that will allow the Petitioners to repay the New Loan Facility and exit *CCAA* proceedings. As a result, the Applicant's offer is coupled with an extension to the Stay of Proceedings to allow the Petitioners time to secure new construction financing.

29. The Applicant is confident that, following refinancing, the Petitioners will secure new construction financing. The Petitioners are in advanced discussions with at least one lender. Additional lenders have conducted extensive due diligence.

30. These *CCAA* proceedings have, to date, been focused on repayment of the CLMS Facility. The New Loan Facility, along with cooperation from Domain, will provide the opportunity to shift the focus to a long-term restructuring.

31. Securing new construction financing requires interim steps that are predicated on having control of the Terrace House Project. The steps include:

    (a) Review of all trades and consultants. This includes confirm drawings and specifications with lead consultants, architects and engineers; updating contracts with existing trades and consultants; and replacing contracts as necessary;

    (b) Confirm construction schedule and budget;

    (c) Renew and extend permits; and

    (d) Review and continue pre-sale program. This includes reviewing the existing contracts; engaging new marketing partners and sales group, and may require re-drafting the disclosure statement and updated purchase contracts.

32. Interim working capital will be funded by existing limited partners and new third party investors. This working capital is expected to be in the range of $3 to $5 million, which will be sourced externally and will not encumber the Lands or other assets.

33. With control of the Terrace House Project and the breathing room provided by the New Loan Facility, it is estimated that completing the interim steps outlined above and finalizing a term sheet a new construction lender will take 30 to 60 days.

34. The New Loan Facility will facilitate securing new construction financing. This will allow the Terrace House Project to proceed as intended, which will permit some, or potentially full, recovery by Aviva and the Other Creditors, and will be a benefit to all stakeholders.

Part 3: LEGAL BASIS

1. The Applicant rely on the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [***CCAA***], the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, s. 18(2) of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 [***REDMA***], and the inherent jurisdiction of the Honourable Court.

Approval of Transaction

2. Under s. 11 of the *CCAA*, a court may "make any order that is considers appropriate in the circumstances."

3. In exercising its discretion, a court "must first of all provide the conditions under which the debtor can attempt to reorganize." Decisions under the *CCAA* take many forms.

> ***Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 60.**

4. The baseline consideration that a court should always bear in mind are the requirements of appropriateness, good faith, and due diligence:

> Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

> ***Century Services* at para. 70**

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5. Debtors and creditors share a common goal: "maximizing recoveries." Fairness demands that a *CCAA* judge "recognize and meaningfully address circumstances in which parties are working against the goals of the statute".

> ***9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 75, citing Janis Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law", 2016 ANNREVINSOLV 2 at 30.**

6. When granting relief under s. 11, a court should balance the interests of all stakeholders and ask whether the order sought advanced the overall prospects of a successful restructuring. Relief under the *CCAA* may prejudice a creditor in favour of the collective whole. "The court's primary concerns under the *CCAA* must be for the debtor and all of the creditors."

> ***Essar Steel Algoma Inc. et al Re*, 2017 ONSC 12 at paras. 41-42.**
> ***Canwest Global Communications Corp.*, 2011 ONSC 2215 at para. 25, citing *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24, 1993 CarswellOnt 183 at para. 6.**
> **See also *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 113, leave to appeal ref'd 2020 BCCA 364.**

7. The New Loan Facility will repay the Interim Lender in full and provides significant recovery for CMLS. The Applicant, in connection with its offer, does not seek to terminate any pre-sale contracts or vest off or compromise any other claims against the Petitioners. The transaction proposed by the Applicant, by design, preserves the prospect of a restructuring for all stakeholders.

8. The Applicant anticipates that the other transactions brought before the Court result in a greater shortfall to CMLS, and no recovery for any subsequent stakeholders. As a result, the transaction proposed by the Applicant is clearly superior.

9. There is a realistic prospect, following approval of the New Loan Facility and an extension to the Stay of Proceedings, that the Applicant will successfully refinance the construction of the Terrace House Project. If successful, the plan will permit some, or potentially full, recovery by Aviva and the Other Creditors. This plan may avoid losses to stakeholders and provides the greatest prospect of recovery for all creditors.

10. The other transactions before the Court would extinguish the claims of the Other Creditors. Their loss is certain under that transaction; the Other Creditors have no ability to mitigate these losses. The other transaction does not impose a risk on the Other Creditors; it would create a definitive loss. In contrast, the transaction proposed by the

Applicant is not seeking to terminate any pre-sale contracts or vest off or compromise any other claims against the Petitioners. Under the restructuring plan, there is a reasonable prospect that the Applicant will secure new construction financing that will permit some, or potentially full, recovery by the Other Creditors. The comparison for the Other Creditors is between certain loss and the potential for some, or even full, recovery with no added risk. The Applicant's offer is clearly a benefit to the Other Creditors as it is the only path to recovery.

11. The transaction proposed by the Applicant is appropriate as it advances the policy objectives underlying the *CCAA*. Given the good faith efforts and due diligence on the part of Reyes to generate new construction financing, and the progress shown, there is a real prospect of greater recovery for all stakeholders. This is coupled with increased recovery for CMLS.

***Century Services* at paras. 70-71**

Release of Deposits

12. A trustee that holds deposits under *REDMA* must not release the deposits. Section 18(2) sets out exceptions to this prohibition. Among other exceptions, deposits may be released to a purchasers with the written consent of the purchaser and the developer (s. 18(2)(b)) and deposits may be released in accordance with a court order (s. 18(2)(h)).

***REDMA*, s. 18(2)(b), (h).**

13. The Deposits paid by the Pre-Sale Purchasers are held, in trust, by Dentons pursuant to *REDMA*.

14. The Irrevocable Directions are sufficient to engage s. 18(2)(b). The transaction is therefore within the scope of the deposit exception provisions of *REDMA*.

***Bison Properties Ltd. (Re)*, 2018 BCSC 1299 at paras. 164, 185.**

15. The Pre-Sale Purchasers all sought and received independent legal advice in connection with the Irrevocable Directions.

16. Given the Irrevocable Directions, an order pursuant to s. 18(2)(h) of *REDMA* authorizing and directing Dentons the Deposits to the Applicant is appropriate in the circumstances.

Stay Extension

17. Under s. 11.02 of the *CCAA*, a court may extend a stay of proceedings for any period that the court considers necessary, provided the applicant satisfies the court that:

(a) Circumstance exist that make the order appropriate; and

(b) The applicant has acted, and is acting, in good faith and with due diligence.

18. The fundamental purpose of the *CCAA* is to facilitate compromises and agreements between companies and their creditors. The *CCAA* is intended to have a wide scope to enable a company to remain in operation for the future benefit of both the company and its creditors, even if that future benefit is not certain.

> ***Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.,* 2008 BCCA 327 at paras. 27-28.**

19. The extension to the Stay of Proceedings is a condition under the Domain Commitment Letter, but critically it is necessary to enable the Applicant to advance restructuring efforts with respect to the Terrace House Project.

20. The Applicant are acting in good faith and with due diligence to secure new constructions financing. There is a reasonable prospect that such funding will be secured within the term of the Domain Commitment Letter and that the Terrace House Project will complete as intended. This will result is the greatest return to Aviva and the Other Creditors, and will be a benefit to all stakeholders.

Part 4: MATERIAL TO BE RELIED ON

1. Fifth Report of the Monitor, dated April 13, 2021;

2. Affidavit #2 of Macario Teodoro Reyes, made 21/MAY/2021; and

3. Such further material as counsel may advise and this Honourable Court my permit.

The applicant(s) estimate(s) that the application will 2 hours.

☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of these proceedings.

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 of 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).

Date: 21/MAY/2021

____
Signature of Jordan Schultz
Lawyer for the Applicant

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:
____
____
____
Date:
Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

☐ 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

SCHEDULE "A"

DRAFT ORDER

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATER OF THE *BUSINESS CORPORATIONS ACT*,
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AND

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

ORDER MADE AFTER APPLICATION

	)	THE HONOURABLE MADAM	)	
BEFORE	)		)	__ / ______ / 2021
	)	JUSTICE FITZPATRICK	)	

ON THE APPLICATION of 1296371 B.C. Ltd. (the "**Applicant**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Jordan Schultz and Eamonn Watson, counsel for the Applicant, and those counsel listed in Schedule "A" hereto;

THIS COURT ORDERS that:

Release of Deposits

1. Dentons Canada LLP ("**Dentons**") is hereby authorized and directed to pay the following amounts, each of which are deposits (collectively the "**Deposits**") held in trust by Dentons pursuant to various pre-sale purchase agreements (the "**Pre-Sale Purchase Agreements**") among the Petitioners, as vendors, and the following persons (the "**Pre-**

Sale Purchasers"), as purchasers, each in respect the following units in the Terrace House development project:

(a) $2,800,000, representing the deposit paid by Luz Consuelo Reyes in respect of her agreement to purchase unit 801;

(b) $1,155,000, representing the deposit paid by 1192706 B.C. Ltd., in respect of its agreement to purchase unit 1001;

(c) $975,000, representing the deposit paid by 1208596 B.C. Ltd., in respect of its agreements to purchase units CRU#1 and CRU#2;

(d) $1,162,500, representing the deposit paid by 1301981 B.C. Ltd. (as assignee from Hudani Investment Corp.), in respect of its agreement to purchase unit 901;

(e) $645,000, representing the deposit paid by 1207867 B.C. Ltd., in respect of its agreement to purchase unit 403;

(f) $592,500, representing the deposit paid by Robert Davis in respect of his agreement to purchase unit 503; and

(g) $675,000, representing the deposit paid by Simon Wang in respect of his agreement to purchase unit 401,

to the Applicant on the following terms:

(h) the Deposits shall be paid by the Applicant directly to CMLS Financial Ltd. ("**CMLS**") for the purposes of purchasing and taking an assignment of all loans (the "**CMLS Facility**") and security (the "**CMLS Security**") held by CMLS against the Petitioners, and such payment shall constitute an advance of a loan by the Applicant to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(i) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by the Applicant to Dentons, in trust, which amounts shall be held pro rata as a Deposit pursuant to each Pre-Sale Purchase Agreement.

2. The Pre-Sale Purchase Agreements shall be unaffected by this Order, except as expressly provided for herein.

Refinancing Transaction

3. The Petitioner is hereby authorized, empowered and directed to obtain and borrower under a credit facility from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**NumberCo**") and the Applicant (collectively, the "**New Lenders**") in order to finance:

(a) repayment in full of all amounts owing to the "**Interim Lender**" (as defined in the Amended and Restated Initial Order made June 8, 2020, herein the "**ARIO**") pursuant to the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, as amended (the "**Interim Lending Facility**");

(b) the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders,

provided that principal amount borrowed under such credit facility shall not exceed $24,005,201 (the "**New Loan Facility**") unless permitted by further Order of this Court.

4. Such credit facility shall be:

(a) in the case of the loan by Domain, on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and Domain dated May 11, 2021 (the "**Domain Commitment Letter**"); and

(b) in the case of the loans by NumberCo and the Applicant, on an interest free basis, payable on demand, but subject to repayment of the Petitioners' obligations to Domain

(collectively, the "**Finance Terms**").

5. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**New Definitive Documents**"), as are contemplated by the Finance Terms or as may be reasonably required by the New Lenders 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 New Lenders under and pursuant to the Finance Terms and the New Definitive Documents as and when the same become due and are to be performed.

6. Upon repayment in full of the Interim Lending Facility, as contemplated in paragraph 3(a) hereof, all security held by the Interim Lender as security for the

Petitioners Obligations under the Interim Lending Facility (including, without limitation, the Interim Lender's Charge (as defined in the ARIO)) shall be discharged and released in full, for all purposes.

7. The purchase and assignment of the CMLS Loan and the CMLS Security by Domain, for and on behalf of the New Lenders (the "**Security Assignment**"), is hereby authorized and approved, and following completion of the Security Assignment, the Petitioners are authorized, empowered and directed to execute and deliver such amending agreements or other documents as may be reasonably required by the New Lenders (collectively, the "**Amending Agreements**") to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders.

8. The CMLS Security, as amended by the Amending Agreements, shall constitute a mortgage, security interest, assignment by way of security and charge on the "**Property**" (as defined in the ARIO) and such charge shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge (as defined in the ARIO) and those claims contemplated by Section 11.8(8) of the CCAA.

Amendments to Initial Order

9. Notwithstanding any other provision of the ARIO:

(a) upon the occurrence of a default under the Domain Commitment Letter, any of the New Definitive Documents, or the CMLS Security (as amended), Domain, upon five business days' notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Domain Commitment Letter, the New Definitive Documents and the CMLS Security (as amended), including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

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

10. Domain, in its capacity as lender pursuant to the Domain Commitment Letter, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), or any

proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under the Domain Commitment Letter.

11. No order shall be made, including pursuant to section 11.2 of the CCAA, granting any security or charge priority over the CMLS Security (as amended) without the consent of Domain.

12. The ARIO is hereby amended by deleting paragraphs 24(a) and (b), and paragraphs 29 to 33 thereof.

13. No further order shall be made in these proceedings without the consent of Domain.

Extension of Stay

14. The stay of proceedings provided for in the ARIO is hereby continued and extended to and including December 11, 2021.

General

15. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant 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:

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Signature of Jordan Schultz
Lawyer for the Applicant

By the Court.

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Registrar

SCHEDULE "A"

(List of Counsel)

Counsel name / litigant	Party Represented