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 AND COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT
LIMITED PARTNERSHIP

APPLICATION RESPONSE

Application response of: Solterra Acquisitions Corp. ("**Solterra**")

THIS IS A RESPONSE TO the notice of application of the Petitioners, Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership, dated May 20, 2021 (the "**Solterra PSA Approval Application**").

Part 1: ORDERS CONSENTED TO

Solterra consents to the granting of the orders set out in ALL paragraphs of Part 1 of the Solterra PSA Approval Application.

Part 2: ORDERS OPPOSED

Solterra opposes the granting of the orders set out in paragraphs NONE of Part 1 of the Solterra PSA Approval Application.

Part. 3: ORDERS ON WHICH NO POSITION IS TAKEN

Solterra takes no position on the granting of the orders set out in paragraphs NONE of Part 1 of the Solterra PSA Approval Application.

Part 4: FACTUAL BASIS

A. Overview

1. The Response filed by Landa Global Acquisitions Ltd. ("**Landa**") to the Solterra PSA Approval Application requires this court to revisit the law concerning when a British Columbia court will re-open a sale process in the face of a late offer, and in what circumstances the court will exercise its discretion to do so. On the facts of this case, and with reference to the relevant authorities, there is no basis on which to re-open the sale process. Rather, the court should accept the recommendation of its officer to approve the Solterra PSA (defined below).

2. On May 14, 2021, the Monitor (on behalf of the Petitioners) and Solterra entered into a purchase and sale agreement dated May 13, 2021 (the "**Solterra PSA**") for the acquisition of the Terrace House Project (defined below). It did so at the conclusion of the Final Marketing Process (defined below), which was embodied in the purchase and sale agreement dated March 25, 2021 (the "**Landa PSA**") among the Petitioners and Landa.

3. According to the Monitor, the Landa PSA, "did not contemplate Landa making any further bids in the event a Superior Offer was received".[1] Indeed, the Landa PSA specifically provided that the Final Marketing Process was intended "for the purposes of soliciting Bona Fide Offers from <u>prospective purchasers that are not party to this Agreement</u>." [Emphasis added].

4. Despite the terms of the Landa PSA and the Monitor's advice as to how the Final Marketing Process operated, Landa purported to submit a further offer to purchase the Terrace House Project that was reportedly $850,000 greater than the purchase price under the Solterra PSA (the "**Revised Landa Offer**") and had a quicker closing date. Using Landa's calculations, the difference in price is approximately 4%.[2]

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[1] Affidavit #1 of Balpreet Khatra, made May 25, 2021 ("**Khatra #1**"), Exhibit "C", p. 60.

[2] The calculation is based on Landa's submissions at the last hearing that, taking into account the quicker closing date and the break fee payable under the Landa PSA, the purchase price under the Revised Landa Offer was

5. In opposing the Solterra PSA Approval Application, Landa sought to have the Revised Landa Offer approved, or an order directing a sealed bid process. In doing so, Landa argues in essence that in a court-supervised sale process in British Columbia, price triumphs over process in all instances. That is, of course, not the case.

6. In B.C., as in other jurisdictions, when presented with a late offer the court must consider whether it shows that the price contained in the original offer was so unreasonably low as to call into question the sale process that produced it. If the later offer meets this threshold, then the court will consider all relevant circumstances to determine whether to re-open the sale process.

7. At only 4% more than the purchase price under the Solterra PSA,[3] the Revised Landa Offer does not cast doubt on the adequacy of the marking and sale process for the Terrace House Project, including, in particular, the Final Marketing Process. For this reason alone, the Revised Landa Offer is should not be considered on this application.

8. Moreover, there is in this case a greater concern for the efficacy and integrity of the sale process, including to avoid what might otherwise result in significant unfairness to Solterra. As the court is now aware, Solterra's offer was disclosed to Landa, who used that knowledge to prepare and submit the Revised Landa Offer, contrary to the terms of its agreement with the Petitioners (by the Monitor) and contrary to the process overseen by the court's officer and approved by this court.

9. The situation would be different had the Final Marketing Process contemplated the submission of a further offer by Landa (or any other party). In that case, the terms of the Solterra PSA would not have been disclosed. But that was not the process, and the prejudice that would be visited upon Solterra if the court re-opens the sale process at this stage is unmitigable.

10. In the circumstances, the only fair and appropriate outcome in this case is for the court to approve the Solterra PSA.

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approximately $850,000 greater than that under the Solterra PSA. Solterra should not be taken as accepting Landa's calculations.

[3] Using Landa's own calculations.

B. Background

11. The Petitioners are the owners of the unfinished development known as the "Terrace House Project", a luxury high-rise residential strata building located at 1250 W Hastings Street, Vancouver (the "**Terrace House Project**").

12. On May 29, 2020, the Petitioners obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), including the appointment of the Monitor with enhanced powers to explore restructuring opportunities for the Terrace House Project and administer a "dual-track" sale and investment solicitation process (the "**SISP**") to secure an equity investment, a refinancing, or, alternatively, a sale of the Terrace House Project.[4]

13. The SISP initially resulted in the execution of an offer submitted by Bosa Properties (OC) Inc., which was approved by this Court on December 1, 2020 (the "**Bosa Offer**"). The Bosa Offer fell through in or around February 2021.[5]

14. On March 1, 2021, Landa, one of the six parties that submitted a bid under the SISP, sent the Monitor a letter of intent to acquire the Terrace House Project.[6]

(I) The Landa PSA

15. Following a series of discussions, Landa and the Monitor (on behalf of the Petitioners) executed the Landa PSA, which provided, among other things, that:

    (a) Landa would purchase the Terrace House Project for the purchase price of $19.5 million (subject to certain adjustments);[7]

    (b) notwithstanding any terms of the Landa PSA to the contrary, beginning on the day the Landa PSA was approved by the court and continuing for 15 days, the Petitioners and the Monitor remained at liberty to engage in further marketing of,

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[4] 5th Report of the Monitor, dated April 13, 2021 ("**5th Report**"), para. 4.

[5] Sixth Report of the Monitor, dated May 20, 2021 ("**6th Report**"), paras. 10-12.

[6] 5th Report, para. 27.

[7] Application Response of Landa dated May 25, 2021 ("**Landa Application Response**"), Part 4, para. 4.

and negotiations in connection with, the Terrace House Project "for the purposes of soliciting Bona Fide Offers from prospective purchasers that are not party to this Agreement" [Emphasis added];[8]

(c) in the event that the Petitioners received a Superior Offer (as defined thereunder), upon completion of such offer, a Break Fee would be payable by the Petitioners to Landa in the amount of $200,000;[9] and

(d) in the event that a Superior Offer was not received, application would be made for an approval and vesting order in favour of Landa.[10]

16. The further solicitation and sale process set out in the Landa PSA was described by the Monitor as the "**Final Marketing Phase**" or the "**Final Marketing Process**".[11] According to the Monitor, and consistent with the very term of the Landa PSA concerning the solicitation of further offers, the Final Marketing Process did not allow for Landa to submit a further bid.

17. On April 16, 2021, this Court granted an order approving the Landa PSA. Paragraph 3 of that order reads as follows:

> 3. Notwithstanding the Approval of the PSA, the Monitor is at liberty to conduct such further marketing and negotiations in connection with, the property of the Petitioners as determined by the Monitor. [Emphasis added]

(II) The Solterra PSA

18. On April 19, 2021, the Monitor sent a letter to eight parties that had expressed interest in the Terrace House Project under the SISP describing the Final Marketing Process and advising that the deadline for the submission of cash offers would be May 7, 2021 (the "**Bid Deadline**").[12]

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[8] Landa Application Response, Part 4, para. 8.

[9] 5th Report, para. 27; Landa Application Response, Part 4, para. 7.

[10] 5th Report, para. 29; Landa PSA, Articles 8.4 and 8.6.

[11] 6th Report, paras. 23-29 and 33-47.

[12] 6th Report, para. 25.

19. Prior to the Bid Deadline, the Monitor received two further bids: one (the "**129 Offer**") from 1296371 B.C. Ltd. ("**129**"); and one from Solterra.[13]

20. Mecario Reyes, a principal of the Petitioners, is also a director and officer of 129. The 129 Offer effectively amounted to a refinancing of the Petitioners' obligations by way of a new loan from 129 along with additional loans from two other entities (totalling approximately $22.5 million), one of which, Domain Mortgage Company ("**Domain**") is arm's-length. Domain's loan in the amount of $14.5 million was subject to a number of conditions, including raising funds from "private mortgage investors".[14]

21. The Solterra PSA was selected by the Monitor as the preferred offer, including because it was unconditional and supported by CMLS Financial Ltd. (" **CMLS**"), whereas the 129 Offer was not.[15]

22. On May 14, 2021, Solterra and the Monitor, on behalf of the Petitioners, executed the Solterra PSA. Among other things, the Solterra PSA included a provision as to confidentiality which reads, in part, as follows:

> **11.17 Confidentiality**. Except as may be required in the CCAA Proceedings, the parties will not disclose the existence of nor the contents of this Agreement to any third party… without the prior written consent of the other party, not to be unreasonably withheld, provided that such consent is not required in the case of disclosure required by law or disclosure by either party to enforce any of its rights under this Agreement or to obtain necessary consents under this Agreement…

23. Also on May 14, 2021, the Monitor advised Landa that it had received a Superior Offer (i.e. the Solterra PSA) and that it intended to seek approval of it.[16]

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[13] 6th Report, paras. 26, 29.

[14] Notice of Application of 129 dated May 21, 2021 ("**129 Application**"), paras. 17 and 20; Affidavit #2 of Macario Reyes, made May 21, 2021 ("**Reyes #2**"), at Exhibit "A", p. 7.

[15] 6th Report, para. 29.

[16] 6th Report, paras. 29, 30; Khatra #1, Exhibit "C", p. 61.

24. At some time after executing the Solterra PSA, and prior to the last hearing on May 25, 2021, the Monitor advised Landa as to the purchase price under the Solterra PSA.

25. On May 20, 2021: (a) the Petitioners filed the Solterra PSA Approval Application, returnable May 25, 2021; and (b) the Monitor filed the Sixth Report recommending that this Court approve the Solterra PSA.

26. On or about May 21, 2021, 129 circulated the 129 Application seeking various relief in support of the 129 Offer and Reyes #2.

27. On or about May 24, 2021, Landa delivered to the Monitor an improved offer to acquire the Terrace House Project (the "**Revised Landa Offer**"). The purchase price under the Revised Landa Offer is reportedly $850,000 more than the purchase price under the Solterra PSA,[17] representing an approximately 4% increase in the purchase price.[18]

28. On May 25, 2021, Landa circulated: (a) the Landa Application Response seeking an order that this Court direct the Petitioners to accept the Revised Landa Offer or, alternatively, direct a sealed bid process; and (b) Khatra #1, which purported to attach both the unredacted Landa PSA and the Revised Landa Offer.

29. On May 25, 2021, the Honourable Madam Justice Fitzpatrick: (a) ordered that the hearing of the Solterra PSA Approval Application and the 129 Application be adjourned to June 8, 2021; and (b) directed that: (i) interested parties were at liberty to submit further bids to the Monitor to be received by no later than 12:00 p.m. on June 4, 2021; and (ii) the Monitor prepare a confidential report in respect of the bids received.

Part 5: LEGAL BASIS

30. The preliminary issue is whether, as Solterra submits, the court should grant the order sought by the Petitioners in the Solterra PSA Approval Application. For the reasons set forth below, Solterra submits that is the only appropriate outcome, and that the court

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[17] Again, using Landa's own calculations.

[18] Landa Application Response, para. 13.

should decline to re-open the sale process and consider the Revised Landa Offer or any other offers submitted after the execution of the Solterra PSA (i.e. May 24, 2021).

31. Section 36 of the CCAA provides that a court may authorize the sale or disposition of a debtor company's assets outside the ordinary course of business on consideration of the non-exhaustive factors set out in Section 36(3).[19] These factors are consistent with and overlap many of the well-known considerations identified in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) ["***Soundair***"], including:

(a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers were obtained; and

(d) whether there has been any unfairness in the sales process.[20]

32. More generally, in analyzing whether a transaction should be approved, taking into consideration the Section 36(3) and *Soundair* factors, a court is to consider the transaction as a whole and whether or not the sale is appropriate, fair and reasonable.[21]

(I) The Revised Landa Offer should not be considered on this application.

33. In its response, Landa cites both *Soundair* and *Quest* for the above propositions, but then cites a trio of foreclosure cases, including *British Columbia v. A & A Estates Ltd.*, 2000 BCCA 317 ("***A&A***"), in support of its submission that the purchase price under the Revised Landa Offer "is substantially higher than the Solterra offer", which "suggests that the consideration under the Solterra offer is not reasonable and fair."[22]

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[19] CCAA, Section 36(3).

[20] *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) ["***Soundair***"]; *Quest University Canada (Re)*, 2020 BCSC 1883 ["***Quest***"], para. 176.

[21] *Quest*, para. 177, citing *Veris Gold Corp., Re*, 2015 BCSC 1204, at para. 23.

[22] Landa Application Response, Part 5, paras. 5, 6, 8, 9.

34. With respect, Landa's argument presumes without justification that the Revised Landa Offer meets the threshold to engage the court's discretion to scrutinize the sale process that produced the Solterra PSA. Moreover, Landa presumes that the court <u>must</u> re-open the sale process simply because the Revised Landa Offer was made, while offering no submissions as to why the sales process was deficient or whether and why the court should exercise its discretion to do so.

35. Where a late bid is submitted in the context of any court-supervised sale process, the court must in each case balance the competing interests of achieving the best sale price for an asset against safeguarding the efficacy and integrity of the sale process. The court's decision, in every case, involves a two-step process with a threshold first step:

(a) The first question for the court is whether the price under the late bid shows that the price contained in the original offer was so unreasonably low as to call into question the adequacy of the sales process.

(b) If the first question is answered in the affirmative, then the court will go on to consider whether, in the circumstances of the case, including the specific sale process approved by the court or its officer, it should exercise its discretion re-open the sale process, including to sealed bids.[23]

36. Obviously, where a late offer represents only a nominal or insignificant increase in the purchase price, the court will not consider that offer. However, even where the increased purchase price under a late offer is material, the court will not in every case re-open the sale process.

37. *Bank of Montreal v. Renuka Properties Inc.*, 2015 BCSC 2058 ["***Renuka***"] is illustrative. In this case, Mr. Justice Blok considered both *Soundair* and *A&A* on a bank's application to approve the sale of assets in a receivership that was opposed by prospective purchasers wishing to submit competing bids, one of which was 37% higher than the bank's offer.[24]

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[23] *Co-operative Housing Federation of Canada v. Bridlewood Co-operative Inc.*, 2012 ONSC 5936, para. 34; *Renuka*, para. 30.

[24] *Renuka*, para. 42.

38. While recognizing that *Soundair* required it to be cautious in deciding that the receiver had acted improvidently "merely because a later and higher bid is made", the court noted that: (a) as in *A&A*, "a disparity may be so great as to call into question the adequacy of the sale process"; and (b) only for such "limited purpose" may late offers be considered.[25] At 37% higher, the late bid met this threshold. Accordingly, Blok J. ordered sealed bids, holding that approving the recommended transaction in light of "substantial difference" between it and the competing bid would place "too high a premium on the deference factor" afforded to the receiver.[26]

39. This makes sense. If a late offer is submitted which is so significantly higher than the existing offer, the court will be minded to investigate whether the sale process leading to the existing offer was adequate. If it was not, then the court would, of course, be inclined to re-open the sale process. Such was the case in *Renuka*, where the court found that the presumptive purchaser had an advantage over the other bidders because it was owned by the former general manager, who had been used by the receiver to assist with the sale process, and the other bidders were unable to make up the disadvantage because it was a short sale process, i.e. three weeks.[27]

40. Conversely, in *Terrace Bay Pulp Inc., Re*, 2012 ONSC 4247 ["***Terrace Bay***"], Morawetz J. (as he then was) followed *Soundair* and approved the Monitor-supported sale of the CCAA debtor company's assets for $27 million in spite of opposition from a late bidder offering $35 million (an improvement of approximately 30%). Even in light of this disparity in bid prices, the court found that there was no "inference that the strategy employed by the Monitor was inadequate, unsuccessful, or improvident, nor that the price was unreasonable", and concluded that "the Receiver made a sufficient effort to get the best price, and did not act improvidently".[28]

41. Lastly, and of most relevance to the present case, in *Cox v. Seymour Village Management Inc.* 2015 BCSC 275 ["***Cox***"] Madam Justice Fitzpatrick approved an offer to purchase a

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[25] *Renuka*, para. 31, citing *Soundair* at paras. 26, 30. [Emphasis added].

[26] *Renuka*, paras. 41-43.

[27] *Renuka*, paras. 39 and 40.

[28] *Terrace Bay*, paras. 46, 52, 54, 55 and 65.

strata development over opposition by a late bidder that had submitted a prior bid under the sales process. While the offers in that case were different in many respects, the court approved the original, lower offer, noting that the difference between the two bids in the sense of the overall price was "nominal".[29]

42. In her decision, among other things, Fitzpatrick J. rejected the late bidder's argument that price was the "most important factor in the sales process" as being derived from a decision in a residential foreclosure which was distinguishable from the "unique situation" that drove the "very considerable and detailed sale process" before the court.[30]

43. Fitzpatrick J. also considered the other factors enumerated in *Soundair*, noting in relation to both the efficacy and integrity of the process and the fairness of the sale process that there was "no suggestion that [the late bidder] was not told what the sales process was or that it was not treated fairly in terms of having an opportunity to put its best foot forward." In considering whether the late bidder "should be allowed to have a second kick at the can", the court noted that while "is not completely unheard of that these late offers are considered; but where they are truly considered, in terms of price being the primary factor, is where there has been a substantial increase in price beyond the price that has been garnered through the sales process."[31]

44. Applying the foregoing to the present case, not only is the increase in the purchase price under the Revised Landa Offer insufficient so as to invite the court to scrutinize the sale process or the other factors enumerated in *Soundair*, even if it were it to do so, the court ought still to approve the Solterra PSA.

45. The purchase price under the Revised Landa Offer is only approximately 4% greater than the purchase price under the Solterra PSA. Whether or not one might describe that increase as "nominal" in the context of the overall purchase price, it does not suggest that the price under the Solterra PSA is unreasonable, or that the Monitor was improvident in

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[29] *Cox*, para. 30.

[30] *Cox*, para. 26.

[31] *Cox*, paras. 28 and 29.

accepting it. Accordingly, there is no reason for the court to further consider the Revised Landa Offer or re-open the sale process.

46. Nevertheless, if the court is minded to consider the factors set out in *Soundair*, each militates in favour of approving the Solterra PSA:

(a) There is no question that the Monitor made sufficient efforts to obtain the best price for the Terrace Project House, and did not act improvidently. There is no suggestion, let alone evidence, to the contrary, including from Landa. The sale process was bespoke and has been ongoing for over 10 months, and the Terrace House Project has been widely marketed. The Monitor even went so far as to initiate the Final Marketing Process to ensure that there were no prospective purchasers who might pay more than what was offered under the Landa PSA. The sale process was undertaken under the oversight of this court, and the Final Marketing Process was approved by this court.

(b) The court should in the circumstances of this case be particularly mindful of safeguarding the efficacy and integrity of the sale process, particularly the Final Marketing Process, which was unique, brief, embodied in an agreement with the late bidder, and approved by the court. Solterra was invited to participate in that process, and in the short time allowed submitted a Superior Offer.

There was no contemplation in the sale process set out in the Landa PSA or undertaken by the Monitor that further offers might be received after the conclusion of the Final Marketing Process, particularly from Landa, who itself agreed in the Landa PSA that the Final Marketing Process was to be carried out to solicit offers from "prospective purchasers that are not a party to this Agreement".

Deference should be given to the views of the court's officer as to the manner in which the Final Marketing Process operated. The Monitor has very clearly stated that it believed Landa was precluded from advancing any further offers.

To permit Landa to submit a further offer after the conclusion of the Final Marketing Process would be to ignore entirely any concerns regarding the efficacy and integrity of the court-supervised sale process. If ever there was a case where such concern supersedes the court's interest in securing the best price, this is it.

(c) As to whether there was any unfairness in the sales process, this case also has a unique feature (which relates as well to the efficacy and integrity of the process). Specifically, in this case, Landa was advised by the Monitor of the purchase price under the Solterra PSA because the Monitor expected the sale process to be concluded. The Monitor certainly did not expect that Landa could or would seek to submit a further bid.

The disclosure of the purchase price under the Solterra PSA will prejudice Solterra if the Solterra PSA is not approved. Not only did the disclosure enable Landa to submit what it knew to be a superior offer, but also, should sealed bids be considered, Landa has gained the advantage of knowing what Solterra's offer is. Had the expectation been that sealed bids would be ordered if the Monitor received a Superior Offer, then (as in foreclosure proceedings) Solterra's offer would not have been disclosed. Landa's subsequent offer might then have been less than that under the Solterra PSA.

At the time the Landa PSA and the Final Marketing Process were approved, there were only two fair means by which to proceed, either: (i) Landa was expressly permitted to submit a further offer, in which case Solterra's offer would have been kept confidential; or (ii) Landa was precluded from submitting a further offer, in which case Solterra's offer could have been disclosed. What is clearly unfair, and ought not to be countenanced, is the manner in which Landa has unilaterally decided to proceed, i.e. on the basis that it gets to submit a further offer <u>and</u> gets to know what Solterra's offer is.

(d) As to the interests of the parties generally, the court will note that the application to approve the Solterra PSA was brought by the Petitioners. They did not withdraw that application upon receipt of the Revised Landa Offer. CMLS was supportive of the Solterra PSA and no other lender or creditor objected to the approval of the Solterra PSA in advance of the last hearing. As for Landa, it can hardly object to approval of the Solterra PSA considering it agreed to the Final Marketing Process which elicited the offer, and it is to receive a substantial break fee on closing of the Solterra PSA.

(II) The Solterra PSA should be approved over the 129 Offer.

47. If the court accepts Solterra's position that there is no basis on which to re-open the sale process, the only remaining issue on the application is whether to approve the Solterra PSA over the 129 Offer.

48. The Monitor has unequivocally recommended that the court approve the Solterra PSA. Such recommendation was made with the 129 Offer in hand, and "based on the premise that the [Solterra PSA] was unconditional and supported by CMLS; whereas the [129 Offer] was not."[32] The Monitor has reasonably preferred the unconditional Solterra PSA rather than assuming the risk that the conditions under the 129 Offer may not be met.[33]

49. Further, deference must be given to the court's officer's commercial judgment, and its recommendations with respect to matters within the scope of its mandate ought to be adopted by the court in all but the most exceptional circumstances. This is particularly true in the context of court-ordered sales processes, which are at the core of a receiver's duties in most cases.[34]

50. Unless the receiver can be shown to have acted improvidently in carrying out the sale process or in recommending an offer for approval, there is no basis on which the court would decline to accept the receiver's recommendation. To do otherwise would reduce any sale process to a court auction and render prior negotiations meaningless.[35]

51. For the foregoing reasons, the Solterra PSA should be approved.

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[32] 6th Report, para. 29.

[33] *Sally Creek Environs Corp., Re*, [2003] O.J. No. 2652, para. 15, citing *Soundair*, and *Skyepharma PLC v. Hyal Pharmaceutical Corp.*, [1999] O.J. No. 4300.

[34] *Soundair*, para. 46; *Renuka*, para. 31.

[35] *Soundair*, para. 30; *Renuka*, para. 31.

Part 6: MATERIALS TO BE RELIED ON

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

2. Order Made After Application, granted April 16, 2021;

3. Sixth Report of the Monitor, dated May 20, 2021;

4. Notice of Application, filed May 20, 2021 (Solterra PSA Approval Application);

5. Notice of Application dated May 21, 2021 (129 Application);

6. Affidavit #2 of Macario Reyes, made May 21, 2021;

7. Application Response, filed May 25, 2021 (Landa Response); and

8. Such further and other materials as counsel for the Petitioners may advise and this Honourable Court shall permit.

The Application Respondent estimates that the application will take **2 hours.**

☑ Solterra has NOT filed in this proceeding a document that contains an address for service.

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Dated: 03-Jun-2021

For: Signature of Kibben Jackson
Lawyer for Solterra Acquisitions Corp.

The Solicitors for the Application Respondent are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/326726.00001)