Affidavit #1 of Brandon Oye
Sworn June 4, 2021

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

AFFIDAVIT

I, BRANDON OYE, of 1550-200 Burrard Street, Vancouver, MAKE OATH AND SAY AS FOLLOWS:

1. I am CFO of the Landa Group, a Vancouver-based residential real estate development group which includes Landa Global Acquisitions Ltd. ("**Landa**"). As such, I have personal knowledge of the matters hereinafter deposed to.

2. Information about the Landa Group's business, including many of the projects it has developed, can be found at www.landaglobal.com.

3. Capitalized terms used in this Affidavit have the meaning ascribed to them in the Application Response of Landa dated May 24, 2021 and filed May 25, 2021, which I have read.

4. Landa has been interested in acquiring the Terrace House Project from the Petitioners for some time. It was one of the qualified bidders in the "SISP" process described in the Monitor's reports to the Court and in this court's Order of June 8, 2020.

5. On March 1, 2021, after the Monitor's negotiations with another bidder (Bosa Properties) had fallen through, Landa sent the Monitor a letter of intent to acquire the Terrace House Project. As set out in the Monitor's reports to the Court, the Monitor reviewed the Revised Landa Offer with CMLS Financial Ltd. ("**CMLS**") and the Petitioners' other secured lenders and, following a series of discussions, the Monitor (on behalf of the Petitioners and subject to Court approval) and Landa executed a purchase and sale agreement (the "**Initial Landa PSA**") dated March 25, 2021.

6. A copy of the Initial Landa PSA is attached as Exhibit "A" to the Affidavit #1 of Balpreet Khatra sworn and filed March 25, 2021.

7. Under the terms of the Initial Landa PSA, the Petitioners, as the "Vendor", were required to complete the transactions contemplated by the Initial Landa PSA unless they received "a Superior Offer on or before 5:00 p.m. (Vancouver time) on the Final Offer Date [namely, May 7, 2021]".

8. Clause 8.7 of the Initial Landa PSA then provides:

> **Satisfaction and Waiver of Vendor's Conditions.** Notwithstanding anything to the contrary set out herein, from the date of issuance of the Preliminary Order until the Final Offer Date, <u>the Vendor and its Authorized Parties may engage in further marketing of and negotiations in connection with the Purchased Assets for the purposes of soliciting Bona Fide Offers from prospective purchasers that are not party to this Agreement</u> (each, a "**Prospective Purchaser**"). In the event that the Vendor receives one or more Bona Fide Offers from Prospective Purchasers which provide for a superior offer to that of the Purchaser under this Agreement (a "**Superior Offer**"), the Vendor shall notify the Purchaser, in writing, that a Superior Offer has been received. The parties agree that <u>if the Vendor receives one or more Superior Offers on or before the time limited in Section 8.6(a), the Vendor accepts one of such Superior Offers and such Superior Offer becomes unconditional, then</u>: (i) this Agreement will automatically be null and void upon the delivery of notice of the same by the Vendor to the Purchaser; (ii) the Deposit shall be returned to the Purchaser with interest (if any); (iii) the Vendor shall use all commercially reasonable efforts to cause the transaction contemplated under such Superior Offer to be completed; and (iv) the Vendor shall pay the Break Fee to the Purchaser within a reasonable period of time following the Vendor's receipt of the proceeds of sale from such Superior Offer. The Vendor acknowledges and agrees that in its marketing of the Purchased Assets to Prospective

> Purchasers, it shall keep the terms of this Agreement (including the Purchase Price) confidential and shall not disclose any such terms to any Prospective Purchasers.

9. As matters transpired, I was eventually (on May 14th) advised by the Monitor, as I describe below, that the Monitor (and I assume the Petitioners) received a Superior Offer from Solterra before the deadline of May 7th – although that offer does not appear to have been finalized or accepted until May 13th or 14th. Landa initially had concerns about this delay, and whether, in fact, a binding Superior Offer was received by the deadline of May 7th; however, it has elected not to make an issue of these concerns, but rather to advocate for a sealed bid process which, if accepted, will result in a significantly higher final price than either Landa or Solterra initially offered.

10. On May 25th I attended (by Teams) the hearing of the Petitioners' application and listened to Mr. Hu's submissions on behalf of Solterra regarding what he perceives as unfairness to Solterra if Landa's improved offer is accepted. In particular, Mr. Hu seemed concerned by the fact that Landa was aware of the price Solterra has offered for the Terrace House assets. To address that concern, I provide the following explanation of how Landa came to know about the Solterra bid and why it decided to make a further bid for the assets.

11. At 5:07 p.m. on May 7th, I sent an email to the Monitor's Mike Bell, asking if the Monitor had received any further offers. A few minutes later, Mr. Bell responded by saying:

> Brandon,
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> Yes, we received one or more offers. I haven't had an opportunity to review the offer(s) in any detail so can't comment if they are bona fide but will be in contact no later than Monday.
>
> Thanks,
>
> Mike

12. Early the following week, I contacted Mr. Bell by telephone to enquire about the status of the offers the Monitor had received, and in particular whether any was a "Superior Offer".

13. On May 11th at 5:33 pm, Mr. Bell sent me an email in which he said:

Brandon,

Thanks for the message, ...

Given the various stakeholders and interests, and our overall obligations, we need to consult with the Secured Creditors before determining whether or not we received a Superior Offer.

As I noted on our call yesterday, one of the offer(s) we received contains elements that may appear on the surface to be superior but other elements which may suggest otherwise and we have sought clarity with respect to those points.

I anticipate that we will be in a position to confirm very shortly. Appreciate your patience.

Thanks.

Mike Bell

14. Copies of my email exchanges with Mr. Bell are attached as Exhibit "C" to Mr. Khatra's affidavit.

15. By May 14th, I still had not been advised by Mr. Bell whether the Monitor had received a Superior Offer. Accordingly, I sent him an email asking for an update. He responded by saying:

Brandon,

We have now completed our consultation with the Secured Creditors and note the following:

- We can confirm we received a Superior Offer to the Landa offer from another party.
- It is our intent to file that Superior Offer with the Court next week at which point the terms of the offer will be disclosed.

Can we set up a call on Monday to discuss procedures going forward?

Thanks,

Mike

16. I responded to Mr. Bell by telling him that Landa was disappointed, and asked him to call me the following Monday (May 17th). Among other things, I wanted to speak to Mr. Bell to find out why it had taken so long to determine that the Solterra offer was a Superior Offer and, generally, to find out what had happened between May 7th and May 14th, when Mr. Bell notified me that the Monitor had determined that it had in fact received a superior offer.

17. Landa had concerns, prior to speaking with the Monitor on May 17th, about the fairness of the process, and was considering the possibility of putting forward an argument that the Monitor (and the Petitioners) were bound to proceed with Landa's initial offer, because there had not been strict compliance with the bid deadline terms described above. In this regard, it seemed to me odd, at best, that it had taken the Monitor a week to evaluate the offer or offers it had received by May 7th. (I have since reviewed the Solterra offer dated May 13, 2021, which is attached to the Monitor's Sixth Report. If that is the form in which the offer was presented on May 7th, it seems to be obviously superior to the initial Landa offer. Why, then, did it take seven days to evaluate?)

18. On May 17th, I and Kevin Cheung, Landa's CEO, and Jin Koh, an advisor to Landa, spoke to the Monitor's Mike Bell and Jason Eckford by telephone. Again, the main purpose of the call was to find out what had happened between May 7th and May 14th. During the course of this conversation Mr. Bell disclosed that one of the offers the Monitor had received was from Solterra, and that it was for $21,000,000. I don't recall whether Mr. Bell revealed any other details of the Solterra offer, such as time of closing. My main recollection is that he told us the price.

19. Neither I nor the other Landa representatives had asked to be told the amounts of other bids. Rather, it was Mr. Bell who volunteered the information. I believe, based on my overall impression of the call, that he did so by way of satisfying Landa that the Solterra offer was indeed a "Superior Offer" and, thus, to allay Landa's concerns about fairness.

20. At some point after Mr. Bell disclosed the amount of the Solterra offer, Mr. Cheung asked whether Landa could submit another offer, which would either match or improve on that offer. Mr. Bell initially responded favourably, but then,

on reflection, said that because he had accepted Solterra's offer, he would need to consult with counsel to determine whether it was possible for Landa to bid again.

21. I do not wish to suggest that Mr. Bell did anything wrong in disclosing the amount Solterra had bid. At the time of our conversation of May 17th, and before we indicated to Mr. Bell that Landa might be prepared to increase its offer, Mr. Bell would have been under the impression that Landa did not intend to make a further bid. (Indeed, when Landa submitted its Initial Offer it did not intend to make a higher bid.) Rather, I have assumed that Mr. Bell would have had the impression that Landa was trying to determine whether it had a basis to argue that the Monitor was bound to proceed with Landa's Initial Offer, because the strict terms of the bid deadline had not been met. It was only when Mr. Bell revealed the amount of the Solterra offer that Mr. Cheung asked about the possibility of a further bid.

22. By the conclusion of our conversation of May 17th, Mr. Cheung and I indicated Mr. Bell and Mr. Eckford that Landa would be prepared to offer more than $21,000,000 and, in that context, we asked him to let us know whether Landa could make a further bid and, if so, how. We left it that Mr. Bell would consult with counsel and get back to us.

23. On May 18th, the following day, I followed up with Mr. Bell by email, and asked whether he had any update on what I described as "the process for us [Landa] to submit a revised offer". On May 19th I followed up again, and later that day Mr. Bell wrote back to me and said:

> Brandon,
>
> Sorry for the slow response, I've had a chance to discuss this matter with counsel.
>
> We are of the view that our agreement with Landa did not contemplate Landa making any further bids in the event a Superior Offer was received. We confirmed last Friday that we received a Superior Offer, and that has been executed. Given that chain of events, we are advised that we are required to present the Superior Offer to Court for approval.
>
> If Landa wishes to improve its offer, the Monitor is prepared to file the offer in a confidential report to the Court and the CMLS lenders or any other Party can make submissions on what transaction ought to be approved.

Thanks,

Mike

24. On May 24th, Landa delivered a revised, improved offer to the Monitor, which the Monitor did put before the court. By its Response to the application of the Petitioners for approval of the Solterra offer, Landa asked the court to approve its improved offer, in preference to the Solterra offer.

25. Landa intended no unfairness to Solterra in making its improved offer. In this regard, Landa fully anticipated that if the court was inclined to consider higher offers, Solterra would be given a further opportunity to bid. The court has now extended that opportunity.

26. To further address any suggestion of unfairness to Solterra, Landa has now submitted a further revised offer to the Monitor, substantially improving on its second bid. Solterra is aware of the price Landa has already offered, and therefore will know the minimum bid it will have to at least match if it wishes to be the highest bidder.

27. If Solterra does not submit a further bid, Landa will, in effect, be "bidding against itself". That is as it may be. Landa believes that the Terrace House project can be successful even at the higher price it has now offered.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 4th day of June, 2021 A Commissioner for Taking Affidavits for the Province of British Columbia	)	**Brandon Oye**

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