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

| | | | | |
|---|---|---|---|---|
| | ) | 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~~Petitioners are 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~~25,000,000 (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,~~June 4, 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.

9. Upon funding of the New Loan Facility and completion of the Security Assignment, the Petitioners are hereby authorized and directed to pay $200,000 to Landa Global Acquisitions Ltd. ("**Landa**"), representing the Break Fee payable pursuant to the Purchase and Sale Agreement dated March 25, 2021, among the Petitioners and Landa.

**Amendments to Initial Order**

10. ~~9.~~ Notwithstanding any other provision of the ARIO, including without limitation the stay of proceedings ordered pursuant to paragraphs 16 and 17 thereof:

(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.

11. ~~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~~Petitioners under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), or any proposal filed by the ~~Petitioner~~Petitioners under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under the Domain Commitment Letter.

12. ~~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.

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

14. Paragraphs 36 and 43 of the ARIO shall be amended as follows:

> 36. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of $100,000.00, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs ~~43 and~~ 46 hereof.
>
> 43. *[Intentionally Deleted]*

15. ~~13. No~~While the New Loan Facility remains outstanding, no further ~~order~~step shall be ~~made~~taken by the Petitioners in these proceedings without the consent of Domain.

**Extension of Stay**

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

17. The Petitioners are hereby authorized, empowered and directed to obtain and borrower under a credit facility from NumberCo in order to finance working capital requirements following funding of the New Loan Facility and completion of the Security Assignment, provided that principal amount borrowed under such credit facility shall not exceed $750,000 (the "**Working Capital Facility**") unless permitted by further Order of this Court.

18. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and NumberCo attached as Exhibit "A" to the Affidavit #4 of Macario Reyes (the "**NumberCo Commitment Letter**").

19. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements and other definitive documents (collectively, the "**WC Definitive Documents**"), as are contemplated by the NumberCo Commitment Letter or as may be reasonably required by NumberCo 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 NumberCo under and pursuant to the NumberCo Commitment Letter and the WC Definitive Documents as and when the same become due and are to be performed.

**General**

20. ~~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:

______________________________
Signature of Jordan Schultz
Lawyer for the Applicant

By the Court.

______________________________
Registrar

# SCHEDULE "A"

(List of Counsel)

| Counsel name / litigant | Party Represented |
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Document comparison by Workshare 9 on 7-Jun-21 5:24:10 PM

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| Description | #55287215v1<NATDOCS> - Draft Order Approving Refinancing Transaction |
| Document 2 ID | interwovenSite://NDCDMS01.LAW.FIRM/NATDOCS/55287215/2 |
| Description | #55287215v2<NATDOCS> - Draft Order Approving Refinancing Transaction (v2) |
| Rendering set | Dentons Standard |

| **Legend:** | |
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| **Statistics:** | |
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