

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) 23/June/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 23rd day of June 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 ("**Sixth Report**"), the Confidential Supplement to the Sixth Report, and the Confidential Seventh Report of Ernst & Young Inc. ("**Seventh 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 for reference June 4, 2021 (the "**Sale Agreement**") between the Petitioners and Solterra Acquisitions Corp. (the "**Purchaser**") attached to this Order as Schedule "B", a copy of which is attached as Appendix "C" to the Seventh 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 "C" 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 (hereafter, "**Residual Co**") of Port Capital Development (EV) Inc. ("**GP**"), and Residual Co shall be added as a Petitioner in these CCAA Proceedings pursuant to paragraph 9 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 (as those terms are defined below) shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;
 - (c) Third, GP shall issue one common voting share (the "**New Common Share**") to the Purchaser, or such other entity as the Purchaser may direct, and, concurrently, and without the need for any further action by GP or any of its shareholders, directors or officers, all other issued and outstanding securities of GP (i.e. excluding the New Common Share), including without limitation any shares in GP, any options and warrants issued by GP to acquire any shares in GP, and any other document, instrument or writing of GP commonly known as a security, are hereby cancelled, none of which shall be with any further force or effect, and the obligations of GP thereunder, or in any way related thereto, shall be satisfied and discharged, with no compensation or participation being provided or payable therefor, or in connection therewith, and all certificates formerly representing any such securities shall be deemed to be cancelled and shall be null and void;
 - (d) Fourth, all of the Petitioners' right, title and interest in and to the Purchased Assets as described at section 1.1(tt)(i) in the Sale Agreement shall vest absolutely in the GP, or such other entity as the Purchaser may direct, 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 any order of this court, including those created by the June 8, 2020 order of this court; (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 "D" 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 "E" 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; and

- (e) Fifth, GP 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 except 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, having considered the interest of third parties, is hereby directed to discharge, release, delete and expunge from title to the Lands as identified in Schedule "F", all of the registered Encumbrances except for those listed in Schedule "E".
 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 in Schedule "E".
 7. The Monitor, on behalf of the Petitioners, and the Purchaser, are at liberty to agree 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 to 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 be deemed to refer to and include Residual Co as defined in the Monitor's Certificate, *mutatis mutandis*, and (ii) "Property" shall be deemed to 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) 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 publicly 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.
Jordan Schultz	1296371 B.C. Ltd.
Kibben Jackson and Glen Nesbitt	Solterra Acquisitions Corp.

Schedule B – Agreement of Purchase and Sale dated for reference June 4, 2021

NEED TO ADD IN AGREEMENT

Schedule C – 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*, R.S.C. 1985, c. C-36 (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**") pursuant to the purchase and sale agreement among the Petitioners and the Purchaser dated for reference June 4, 2021 (the "**Sale Agreement**"), providing for the vesting in the Purchaser of all of the Petitioners' right, title and interest in and to the Purchased Assets, 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 incorporated Residual Co in accordance with the Approval and Vesting Order.
- 2. The Monitor confirms on behalf of the Petitioners, and has received written confirmation from the Purchaser, that all conditions of completion of the Sale agreement have been satisfied or waived by the applicable parties.
- 3. The Purchase Price payable under the Sale Agreement has been received by the Monitor or the Petitioners' solicitor.

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

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

Per:

Name:

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

Nature: MORTGAGE
Registration Number: CA6395613
Registration Date and Time: 2017-10-25 14:37
Registered Owner: AVIVA INSURANCE COMPANY OF CANADA
INCORPORATION NO. A0051421

Nature: ASSIGNMENT OF RENTS
Registration Number: CA6395614
Registration Date and Time: 2017-10-25 14:37
Registered Owner: AVIVA INSURANCE COMPANY OF CANADA
INCORPORATION NO. A0051421

Nature: MORTGAGE
Registration Number: CA7337616
Registration Date and Time: 2019-02-06 15:25
Registered Owner: CMLS FINANCIAL LTD.
INCORPORATION NO. BC0124226

Nature: ASSIGNMENT OF RENTS
Registration Number: CA7337617
Registration Date and Time: 2019-02-06 15:25
Registered Owner: CMLS FINANCIAL LTD.
INCORPORATION NO. BC0124226

Nature: PRIORITY AGREEMENT
Registration Number: CA7337731
Registration Date and Time: 2019-02-06 16:03
Remarks: GRANTING CA7337616 PRIORITY OVER CA6395613 AND
CA6395614

Nature: PRIORITY AGREEMENT
Registration Number: CA7337732
Registration Date and Time: 2019-02-06 16:03
Remarks: GRANTING CA7337617 PRIORITY OVER CA6395613 AND
CA6395614

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8047964
Registration Date and Time: 2020-02-21 12:07
Registered Owner: AR-CON HOLDINGS LTD.
INCORPORATION NO. BC1172997

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8140760
Registration Date and Time: 2020-04-15 16:55
Registered Owner: URBAN ONE BUILDERS CM INC.
INCORPORATION NO. BC1028882

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8148543
Registration Date and Time: 2020-04-21 11:42
Registered Owner: MATAKANA SCAFFOLDING B.C. INC.
INCORPORATION NO. BC0683439

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8154113
Registration Date and Time: 2020-04-23 17:28
Registered Owner: FRANCL ARCHITECTURE INC.
INCORPORATION NO. BC1143645

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8155198
Registration Date and Time: 2020-04-24 11:09
Registered Owner: DOKA CANADA LTD./LTEE
INCORPORATION NO. A0070064

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8170195
Registration Date and Time: 2020-05-01 11:14
Registered Owner: CAIRNS ELECTRIC LTD.
INCORPORATION NO. BC1191875

Nature: CLAIM OF BUILDERS LIEN
Registration Number: WX2147027
Registration Date and Time: 2020-05-01 13:44
Registered Owner: DYNAMIC STRUCTURES LTD.

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8187493
Registration Date and Time: 2020-05-13 14:07
Registered Owner: GLASTECH GLAZING CONTRACTORS LTD.
INCORPORATION NO. BC1188251

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8193236
Registration Date and Time: 2020-05-15 12:26
Registered Owner: TWO PILLARS CONSTRUCTION LTD.
INCORPORATION NO. BC0740590

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8198230
Registration Date and Time: 2020-05-20 12:53
Registered Owner: CENTURA BUILDING SYSTEMS (2013) LTD.
INCORPORATION NO. BC0959038

Nature: CERTIFICATE OF PENDING LITIGATION
Registration Number: CA8208931
Registration Date and Time: 2020-05-27 11:24
Registered Owner: URBAN ONE BUILDERS CM INC.
INCORPORATION NO. BC1028882

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8213493
Registration Date and Time: 2020-05-28 15:40
Registered Owner: RDH BUILDING SCIENCE INC.
INCORPORATION NO. BC0549924

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8232262
Registration Date and Time: 2020-06-08 16:39
Registered Owner: COLUMBIA SEAL LTD.
INCORPORATION NO. 1091476

Nature: MORTGAGE
Registration Number: CA8277031
Registration Date and Time: 2020-06-30 16:49
Registered Owner: DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY
INCORPORATION NO. A0056166

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8381710
Registration Date and Time: 2020-08-25 09:42
Registered Owner: HARRIS STEEL ULC
INCORPORATION NO. A0078280

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8381711
Registration Date and Time: 2020-08-25 09:42
Registered Owner: HARRIS STEEL ULC
INCORPORATION NO. A0078280

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8381712
Registration Date and Time: 2020-08-25 09:42
Registered Owner: HARRIS STEEL ULC DBA HARRIS REBAR
INCORPORATION NO. A0078280

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8381713
Registration Date and Time: 2020-08-25 09:42
Registered Owner: HARRIS STEEL ULC
INCORPORATION NO. A0078280

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8381714
Registration Date and Time: 2020-08-25 09:42
Registered Owner: HARRIS STEEL ULC
INCORPORATION NO. A0078280

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8381715
Registration Date and Time: 2020-08-25 09:42
Registered Owner: HARRIS STEEL ULC
INCORPORATION NO. A0078280

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8430537
Registration Date and Time: 2020-09-15 15:37
Registered Owner: INTEGRAL GROUP CONSULTING (BC) LLP

Nature: CERTIFICATE OF PENDING LITIGATION
Registration Number: CA8783490
Registration Date and Time: 2021-02-19 09:20
Registered Owner: AR-CON HOLDINGS LTD.
INCORPORATION NO. BC1172997

Nature: CLAIM OF BUILDERS LIEN
Registration Number: CA8904368
Registration Date and Time: 2021-04-08 14:23
Registered Owner: DOKA CANADA LTD./LTEE

Nature: CERTIFICATE OF PENDING LITIGATION
Registration Number: CA8932182
Registration Date and Time: 2021-04-20 10:17
Registered Owner: MATAKANA SCAFFOLDING B.C. INC.
Remarks: INTER ALIA

Nature: CERTIFICATE OF PENDING LITIGATION
Registration Number: CA8939175
Registration Date and Time: 2021-04-22 11:47
Registered Owner: FRANCL ARCHITECTURE INC.
INCORPORATION NO. BC1143645

Nature: CERTIFICATE OF PENDING LITIGATION
Registration Number: CA8984690
Registration Date and Time: 2021-05-06 15:08
Registered Owner: GLASTECH GLAZING CONTRACTORS LTD.
INCORPORATION NO. BC1188251

Nature: CERTIFICATE OF PENDING LITIGATION
Registration Number: CA9002006
Registration Date and Time: 2021-05-13 10:11
Registered Owner: TWO PILLARS CONSTRUCTION LTD.
INCORPORATION NO. BC0740590

Schedule E – 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 "F" – 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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ORDER MADE AFTER APPLICATION

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