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

APPLICATION RESPONSE

Application response of: Landa Global Acquisitions Ltd. (“**Landa**”)

THIS IS A RESPONSE TO the notice of application of the Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (the “**Vendor**”), filed May 20, 2021.

Part 1: ORDERS CONSENTED TO:

NONE

Part 2: ORDERS OPPOSED:

The Application Respondents oppose the granting of the Orders sought in paragraphs 1(a) (abridging time for service) and 3(a) (approval of sale to Solterra Acquisitions Corp. (“S**olterra**”)) of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN:

The Application Respondent takes no position on the granting of any of the Orders sought other than those specifically opposed.

Part 4: FACTUAL BASIS

1. The Notice of Application was filed May 20, 2021, and is said to be returnable May 25, 2021. It therefore provides only one business day's notice.

2. Landa was not served with the Notice of Application. It became aware of the application when the Monitor's Sixth Report to the Court was posted on the Monitor's website.

3. As set out in the Monitor's reports to the Court, Landa made an offer to purchase the Terrace House Project on March 25, 2021 (the "First Landa Offer").

4. The First Landa Offer was for $19,500,000, and was accepted by the Vendor.

5. Pursuant to the terms of the First Landa Offer, Landa has paid the Vendor a deposit of $1,900,000.

6. The Vendor's obligations to complete the transactions contemplated by the First Landa Offer were subject to a condition that the Vendor did not receive a Superior Offer before May 7, 2021.

7. The First Landa Offer contains a provision that if the Vendor accepts a Superior Offer, and if that Superior Offer results in a concluded agreement of purchase and sale, the Vendor will pay Landa a Break Fee of $200,000.

8. The First Landa Offer contains the following provisions:

> 8.6 **Vendor's Conditions.** The Vendor's obligation to complete the transactions contemplated by this Agreement is subject to the following conditions, all of which are for the sole benefit of the Vendor:
>
> > (a) the Vendor does not receive a Superior Offer on or before 5:00 p.m. (Vancouver time) on the Final Offer Date; …
>
> If the conditions set out in this Section have not been satisfied by notice in writing from the Vendor to the Purchaser, by the times specified in this Section, the Vendor may, with the written consent of the Monitor, by notice in writing to the Purchaser waive satisfaction of such conditions, in whole or in part, without prejudice to any of its other rights under this Agreement and complete the sale of the Purchased Assets or elect not to complete.
>
> 8.7 **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, 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 (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 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: (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. On or about May 14, 2021, the Monitor advised Landa that it had received a Superior Offer from Solterra. However, the Vendor has not returned Landa's deposit, as required.

10. On or about Many 17, 2021, Landa asked the Monitor whether it could submit a revised offer.

11. On May 19, 2021, the Monitor's Mike Bell wrote to Landa's Brandon Oye 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

12. On May 21, 2021, the Monitor's Jason Eckford wrote to Landa's Brandon Oye and said:

> Hi Brandon,
>
> The Court Hearing is currently scheduled for **9:00am Tuesday, May 25, 2021** to be held via Teams. Login credentials are below.
>
> If you wish to submit a revised offer and can get it to us over the weekend, we will provide this to the Judge in a confidential report ahead of the scheduled hearing so that it will be considered.
>
> Please let us know if you have any questions.
>
> Thanks,
> Jason

13. Landa has now delivered a revised, improved offer to purchase the Terrace House Project. Landa understands that its offer is $500,000 more than the Solterra Offer. As well, closing would be in 30 days.

Part 5: LEGAL BASIS

1. Rule 8-1(8) requires that the materials referred to in Rule 8-1(7) be served at least 8 business days before the date set for the hearing of the application. Here, the Notice of Application was filed May 20, 2021, which is only 1 business day before the date set for the hearing.

2. Moreover, the Application was not served on the Application Respondents.

3. The Application Respondents recognize that in insolvency matters, the times for filing materials are frequently abridged. However, in the circumstances, the Application Respondents have not had sufficient time to prepare a response.

4. With respect to the substance of its position, in *Quest University, Re,* 2020 BCSC 1883, this court said (at paras. 175-177)

175 Section 36(1) of the CCAA allows the court to authorize the sale of a debtor company's assets out of the ordinary course of business. Section 36(3) of the *CCAA* lists the relevant non-exhaustive factors to be considered:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

176 The well-known considerations identified in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) at 6 are consistent with and overlap many of the s. 36(3) factors: see *Veris Gold Corp., Re*, 2015 BCSC 1204 (B.C. S.C.) at para. 25, referring to various authorities such as *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 2870 (Ont. S.C.J.) [Commercial List]) at para. *13*. Those considerations include: (i) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers were obtained; and, (iv) whether there has been any unfairness in the sales process.

177 More generally, in analyzing whether a transaction should be approved, taking into consideration the s. 36(3) and *Soundair* factors, a court is to consider the transaction as a whole and decide whether or not the sale is appropriate, fair and reasonable: *Veris Gold* at para. 23.

5. In *Westcoast Savings Credit Union v. Wachal,* 1988 CarswellBC 547 (BCCA), Mr. Justice McFarlane remarked on the factors a court must weigh in situations such as this (at para. 10):

10 I agree … that judicial auctions ought not to be encouraged and that if they are carried too far, it would create chaos in the commercial world and receivers and purchasers would never be sure what was going to happen. <u>But the primary duty of the court is to see that the best possible price is obtained for the property in question</u>. Often, there will be one offer and then

> there will be other offers made at or about the time the application is ready to be heard. What is a receiver-manager to do in those circumstances? It seems to me that his duty is to put all the information which he has before the court with his recommendations.
>
> 11 In this case, the receiver-manager did his duty. He placed the two offers, the St. Laurent and Ericksteen offers, before the court, informed the court of the possibility of the third offer by Anaka's client, and when he appeared before the court, presented the M.S.A. Holdings Ltd. offer. What is a judge to do when faced with that dilemma? Judges in this province have for quite some time now solved that problem by ordering that sealed bids be filed. That was what was done by Mr. Justice Bouck in *Royal Bank v. Derco Indust. Ltd.* That was the general process which was given approval by this court, although in an obiter statement, in *F.B.D.B. v. Mission Creek Farm Inc.* (1988), 25 B.C.L.R. (2d) 188 at 199, [1988] 5 W.W.R. 241, 28 C.P.C. (2d) 171, 50 D.L.R. (4th) 616. In that case, the chambers judge had actually approved a sale but later set aside his order before it was entered and directed that four interested purchasers submit sealed bids. The result was the obtaining of the higher price. This court held that the judge enjoys a discretion to set aside or vary an unentered order, but concluded with this passage in the reasons of Mr. Justice Taggart at p. 199:
>
>> In the circumstances of this case, I think Judge van der Hoop properly exercised his discretion. His reasons for judgment show that he was concerned by the "flurry of activity", after a long period when no offers for the purchase of the property in question had been forthcoming, with several prospective purchasers expressing interest in the property. I think the judge was right to set aside his order of 5th December and direct a submission of sealed bids. That I understand is the practice commonly followed where a number of purchasers are interested in making offers for the property.

6. In *Royal Bank v. Vaishnav*, 2005 BCSC 1783, Mr. Justice Burnyeat reviewed the law in this area.

> 15 The earliest view on this question was set out by the Court of Appeal in *Westcoast Savings Credit Union v. Wachal* (1988), 32 B.C.L.R. (2d) 390 (B.C. C.A.) where Macfarlane J.A., dealt with an application for leave to appeal an order approving a sale where there were competing offers, and the appeal of the highest bidder who argued that its original lower offer should be approved in order to preserve "... the integrity of the process under which the sale occurs". In dealing with the standard of review, Macfarlane J.A. stated:
>
>> The court here was acting pursuant to the discretionary power found in Rule 50(5)(g) under which the court *may* order a sale of the

> mortgaged property. An appellate court will not presume to substitute its own discretion for the discretion already exercised by the judge or otherwise to interfere with such an order unless it reaches the clear conclusion that the discretion has been wrongly exercised in that no sufficient weight has been given to relevant considerations or that on other grounds it appears that the decision may result in an injustice: see *Taylor v. Vancouver Gen. Hosp.*, 62 B.C.R. 42, [1945] 3 W.W.R. 510, [1945] 4 D.L.R. 737 (C.A.).

A shorter statement of the same rule is that the Court of Appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong.
(at pp. 393-4)

16 The more current statement by the Court of Appeal on this question is set out in *British Columbia v. A & A Estates Ltd.* (2000), 75 B.C.L.R. (3d) 107 (B.C. C.A.), where the Court dealt with three appeals brought from an order of the Chambers Judge who ordered that a sale at $492,160.00 should be approved while setting aside an order of a Master who had approved a sale of property at $1,150,000.00. In dealing with the question of whether a late bid should prevail because it is higher, Esson J.A. stated on behalf of the Court:

> At the time Macfarlane J.A. spoke [in ***Wachal***, *supra*], the present system by which masters deal with virtually all applications for approval of sale in foreclosure proceedings had not come into effect. In 1991, when Macdonald J.A. refused leave to appeal in Sun Life [***Savings & Mortgage Corp. v. Sampson*** (1991), 59 B.C.L.R. (2d) 355 (B.C.S.C.); 62 B.C.L.R. (2d) 399 (B.C.C.A.)], the system had been in effect for a very short time. It has now been in effect for almost a decade. In 1988, Macfarlane J.A. expressed the view that trial judges understood the proposition that judicial auctions should be discouraged. Since then, the masters, a relatively small and cohesive group, have heard the great majority of applications to approve sales. They have gained a level of experience in these difficult matters which is higher than that of most judges. That being so, it is appropriate that judges hearing appeals from masters in these cases should start with the assumption that the masters understand the legal principles and factual considerations applicable to such applications. (at para. 44)

17 In dealing with the question of whether the order appealed from was an interlocutory or a final order, Esson J.A. stated:

> In saying that, I should not be taken as suggesting that the principles laid down in *Abermin Corp. v. Granges Explor*. Ltd. (1990), 45

> B.C.L.R. (2d) 188 should be modified. I assume, without deciding, that this was not a purely interlocutory matter and that it was therefore open to the judge to substitute her own view for that of the master. But, in deciding whether to give effect to a different view, a judge should give due recognition to the reality that masters have certain advantages arising out of their great experience in matters of this kind. (at para. 45)

18 In dealing with the general question of whether a lower offer can be approved, Esson J.A. stated:

> The passage referred to by the chambers judge in this case was clearly obiter but was intended to emphasize that a receiver's decision to enter into an agreement for sale subject to court approval should not be set aside "simply because a later and a higher bid is made". I do not disagree with that point of view provided it is applied within reasonable limits. Where the later offer is higher, the court may refuse to entertain it and to approve the sale recommended by the receiver or other person given conduct of sale. But in practice, that is done only where the improvement on the price is not significant and, in most cases, where it also appears that the late bid is less firmly secured than the recommended one. (at para. 40)

19 The statements of Esson J.A. in *A & A* regarding the standard of review have now been adopted by this Court. After concluding that the appeal from an order approving a sale required a re-hearing, Quijano J. in *Island Savings Credit Union v. Ferguson*, [2003] B.C.J. No. 1104 (B.C. S.C.) dealt with the standard of review as follows:

> In a number of cases in this jurisdiction it has been recognized that an order by a master approving sale is not an interlocutory order but is an order in the nature of a final order. Therefore, the appeal from such an order is by way of re-hearing. (at para. 19)

It is clear that, at this point, appeals from such orders are to be by way of re-hearing but that there is deference to be paid to the masters in recognition of their "great experience" in matters of this kind. (at para. 21)

20 While the highest price is an important factor, it is not the sole factor which should influence the Court in exercising its discretion to approve a sale in foreclosure proceedings. For instance, where the Court has fixed a specific bidding process, the integrity of the court process might well override the obtaining of the best price: *Selkirk, Re* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C.); *Royal Bank v. Derco Industries Ltd.* (1988), 24 B.C.L.R. (2d) 202 (B.C. S.C.); *Bank of Nova Scotia v. Yoshikuni Lumber Ltd.* (1992), 74 B.C.L.R. (2d) 19 (B.C. C.A.); and *Wachal*, *supra*. As well, the higher offer

may not necessarily be approved where the "improvement on the price is not significant" or where it appears that the higher bid was "less firmly secured than the recommended on", per the comments of Esson J.A. in *A & A Estates*, *supra*.

7. In this case it seems apparent that the Monitor would have preferred that Landa be permitted to submit a revised offer, but that it felt constrained by the terms of the agreement between Solterra and the Vendor.

8. The revised offer of Landa is "significantly" better than the Solterra offer.

9. One of the factors the court must consider (as noted in *Quest*) is whether the consideration to be received for the assets is reasonable and fair, taking into account their market value. Here, the Landa revised offer is substantially higher than the Solterra offer. This suggests that the consideration under the Solterra offer is not reasonable and fair.

10. The court should direct the Vendor to accept Landa's revised offer or, alternatively, direct a sealed bid process.

11. Solterra and Landa are both sophisticated parties. The Solterra offer is expressly made subject to this court's approval by way of a vesting order. It also expressly recognizes the risk of another, better offer being accepted by the Court. Thus, clause 8.5 contains this language:

    > In the event that an Order is granted ordering the sale of the Purchased Assets to a party other than the Purchaser, the Vendor shall pay to the Purchaser the Purchaser's reasonable costs incurred to the date of the Order up to a maximum of Fifty Thousand Dollars ($50,000.00), within ten (10) Business Days after the Vendor's receipt of proceeds of the sale of the Purchased Assets to such other party.

12. The two prospective purchasers have done their due diligence. They clearly understand that this is a court ordered process. Landa, for its part, would be prepared to submit a further, sealed bid for consideration not less than what it has offered. There is no risk to the creditors in this.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Balpreet Singh Khatra sworn May 25, 2021.

The application respondents estimate that the application will take 45 minutes.

[X] The application respondents have filed in this proceeding a document that contains the application respondents' address for service.

[ ] The application petitioners has not filed in this proceeding a document that contains an address for service.

The application respondents' ADDRESS FOR SERVICE is:

Turner & Co.
#1600 – 409 Granville St
Vancouver, BC V6C 1T2

Attention: Scott A. Turner

Email: sturner@turnerco.ca

Telephone: 604-336-3071

Date: 25/MAY/2021

Scott Adam Turner NRGBR1 Digitally signed by Scott Adam Turner NRGBR1 Date: 2021.05.24 17:49:06 -07'00'

Signature of
lawyer for application respondent
Scott A. Turner

Affidavit #1 of Balpreet S. Khatra
Sworn May 25, 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, BALPREET S. KHATRA, BARRISTER & SOLICITOR, MAKE OATH AND SAY AS FOLLOWS:

1. I am an associate lawyer with Turner & Co. and, as such, I have personal knowledge of the matters hereinafter deposed to.

2. Capitalized terms used in this Affidavit have the meaning ascribed to them in the Notice of Application of Landa Global Acquisitions Ltd. ("**Landa**") dated May 24, 2021, which I have read.

3. Now shown to me marked and attached to this my Affidavit as **Exhibit "A"** is a copy of the First Landa Offer.

4. Now shown to me marked and attached to this my Affidavit as "**Exhibit B**" is a copy of the revised Landa Offer.

5. Now shown to me marked and attached to this my Affidavit as **Exhibit "C"** is a copy of a chain of emails among representatives of Landa and the Monitor between May 7 and May 21, 2021.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 25 day of May, 2021	)	
A Commissioner for Taking Affidavits for the Province of British Columbia	)	**Balpreet S. Khatra**

SCOTT A. TURNER
Barrister & Solicitor
#1600 - 409 GRANVILLE ST.
VANCOUVER, B.C. V6C 1T2
604-336-3065

PURCHASE AND SALE AGREEMENT
(TERRACE HOUSE, VANCOUVER, BC)

THIS AGREEMENT is dated for reference March 25, 2021 and is made

AMONG:

PORT CAPITAL DEVELOPMENT (EV) INC., a British Columbia corporation formed under the *Business Corporations Act* (British Columbia)

(the "**GP**")

AND:

EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP, a British Columbia limited partnership formed under the *Partnership Act* (British Columbia)

(the "**Limited Partnership**" and, together with the GP, the "**Vendor**")

AND:

LANDA GLOBAL ACQUISITIONS LTD., a British Columbia company formed under the *Business Corporations Act* (British Columbia)

(the "**Purchaser**")

BACKGROUND:

A. The Vendor is the legal and beneficial owner of the lands and premises legally described in Part 1 of Schedule A (the "**Lands**").

B. The Vendor obtained an initial order of the Supreme Court of British Columbia dated May 29, 2020 under the *Companies' Creditors Arrangement Act*, which among other things, commenced the CCAA Proceedings and granted an initial stay of proceedings in respect of the Vendor.

C. The Purchaser submitted to the Monitor a non-binding letter of intent dated March 1, 2021, which was amended by way of email correspondence sent by the Purchaser on March 4, 2021 (collectively, the "**LOI**"), that contemplated that the parties would commence negotiations of this Agreement on the terms set out in such LOI.

D. The Vendor has agreed to sell and the Purchaser has agreed to purchase all of the Vendor's right, title, and interest in and to the Purchased Assets (as defined in this Agreement) on the terms and conditions set out in this Agreement.

FOR CONSIDERATION, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

This is Exhibit "A" referred to in the Affidavit of Balpreet Khatra sworn (or affirmed) before me at Vancouver, B.C. this 25 day of May 2021.

A Commissioner/Notary Public for the Province of British Columbia

and that save and except as set out in Section 8.9 hereof, this Agreement supersedes and replaces such Original Purchase Agreement as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

(a) "**Approved Contracts**" means those Contracts entered into by the Vendor and any third party consultants in connection with the Project along with any other material Contracts which the Purchaser approved by way of notice in writing to the Vendor pursuant to the Original Purchase Agreement.

(b) "**Approval and Vesting Order**" has the meaning given to it in Section 8.3(a)(ii).

(c) "**Authorized Parties**" has the meaning given to it in Section 11.17.

(d) "**Balance**" has the meaning given to it in Section 2.2(c).

(e) "**Break Fee**" means $200,000.00, inclusive of any applicable taxes, payable under the Original Purchase Agreement.

(f) "**Buildings**" means all buildings and improvements located on the Lands.

(g) "**Business Day**" means any day that is not a Saturday, Sunday, Boxing Day, Easter Monday or statutory holiday in British Columbia.

(h) "**Buyer**" means a purchaser of one or more condominium units at the Property pursuant to Pre-Sale Contracts.

(i) "**Buyer List**" means a list of all Buyers specifying the name of each Buyer (or if applicable any assignee or sublessee) as stated in the applicable Pre-Sale Contract, such Buyer's address and the amount of any deposits held by or on behalf of the Vendor in accordance such Pre-Sale Contract.

(j) "**CCAA Proceedings**" means the legal proceedings in the Court under the *Companies' Creditors Arrangement Act*, Vancouver Registry No. S-205095.

(k) "**Chattels**" means all of the personal property owned by the Vendor and used in connection with the Project including without limitation, all fixtures, leasehold improvements, glass, personal property, plant, and equipment, inventory including spare parts, furniture whether moveable or built-in, computer hardware, kitchen equipment, tools and supplies, whether the same is located on the Lands or otherwise.

(l) "**Closing Date**" means the date that is the later of (i) the date that is 30 days after the granting of the Final Order; and (ii) the date that all applicable appeal periods in connection with the Final Order have expired.

(m) "**Closing Documents**" has the meaning given to it in Section 9.4.

(n) "**Consultant Reports**" means all consultant reports and studies that were commissioned by the Vendor in connection with the Project.

(o) "**Contracts**" means all contracts or agreements, other than Title Contracts and Pre-Sale Contracts, relating to the use or operation of the Property or any part thereof or the design, development and construction of the Project, including, without limitation, the consulting agreements in connection with the Property or any part thereof made by or on behalf of the Vendor relating to the Property.

(p) "**Court**" means the Supreme Court of British Columbia.

(q) "**Creditors**" means creditors of the Vendor.

(r) "**Delay Notice**" has the meaning given to it in Section 11.13.

(s) "**Deposit**" means the deposits referred to in Sections 2.2(a) and 2.2(b).

(t) "**Encumbrance**" means any legal notation, charge, lien, interest or other encumbrance or title defect of whatever kind or nature, regardless of form, whether or not registered or registrable and whether or not consensual or arising by law (statutory or otherwise), including any mortgage, lien, pledge, debenture, trust deed, assignment by way of security, security interest, conditional sales contract or similar interest or instrument charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein, and any agreement, lease, licence, option or claim, easement, right of way, restriction, execution or other encumbrance (including any notice or other registration in respect of any of the foregoing) affecting title to or the ownership of the Purchased Assets or any part thereof or interest therein.

(u) "**ETA**" has the meaning given to it in Section 10.1.

(v) "**Execution Date**" means the date of this Agreement as first noted above.

(w) "**Excluded Assets**" means: (i) all shares of capital stock or other equity interest in securities in any entity other than the Shares; (ii) any partnership interest in the Limited Partnership; (iii) Contracts which are not Approved Contracts; (iv) all Liability of the Vendor arising prior to the Closing Date including, but not limited to, Liability owed to lenders, service contractors or third parties of any kind including all Liability under the Approved Contracts or Plans, Permits and Approvals; (v) any Liability relating to or arising out of the Excluded Assets including, without limitation, Liability for terminating, not complying with or defaulting under any Contract; (vi) any Liability of the Vendor for taxes resulting from the Vendor's sale of the Purchased Assets; (vii) all employees, employment agreements, executive personnel agreements, officer or director agreements, union contracts, collective agreements, employee wages, employee benefit plans or payments, pension obligations, employee tax withholding obligations, employee health or dental plan obligations, all grievances, arbitrations, employee complaints or claims, labour relations board actions or other employee proceedings and similar obligations of the Vendor; (viii) all Liability for payment of fees for operations of the Purchased Assets up to the Closing Date; (ix) any proceedings, claims or actions commenced in any court initiated against the Vendor or threatened against the Vendor; (x) the costs and expenses and Liability of the Vendor under the CCAA Proceedings; (xi) any Liability for a breach or non-compliance with any applicable law; (xii) the Liability of the Vendor under this Agreement and any other assets, property or obligations which pursuant to the terms and conditions of this Agreement, remain the property of the Vendor after the completion of the transactions contemplated herein including, without limitation, the rights of the Vendor under this Agreement; (xiii) any proceedings, claims or causes of action for the benefit of the Vendor; (xiv) all cash of the Vendor; (xv) Receivables; and (xvi) all Pre-Sale Contracts including, for greater certainty, all deposits provided pursuant to the Pre-Sale Contracts and all claims, causes of action or rights in relation to such deposits.

(x) "**Excusable Delay**" means any delay in the performance or observance by the Vendor or Purchaser of any obligation or act of the Vendor or Purchaser, as applicable, hereunder which occurs as a consequence of or is attributable to any circumstance which is not caused by any default or act of commission or omission of that party and which is beyond the reasonable control of that party, including without limiting the generality of the foregoing, strikes or labour or industrial disturbances (including lock-outs), civil disturbances, acts, orders, legislation, regulations, good faith compliance with an order, directive, guideline or other recommendation of any governmental or other public authorities (including, without limitation, health authorities or occupational safety authorities), acts of public enemies, war, riots, sabotage, blockades, embargoes, shortages of materials and suppliers, shortages of labour, lightning, earthquakes, fire, storms, pandemics, epidemics, quarantines and health emergencies, hurricanes, floods, wash-outs, explosions and acts of God, but excluding, for clarity, the financial circumstances of the Purchaser.

(y) "**Final Order**" has the meaning given to it in Section 8.3(a).

(z) "**Governmental Authority**" means (i) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise), (ii) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government, (iii) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions, and (iv) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

(aa) "**GST**" has the meaning given to it in Section 10.1.

(bb) "**GST Certificate**" has the meaning given to it in Section 10.1.

(cc) "**Intellectual Property**" means all intellectual property and proprietary rights of any kind in connection with the Project, including the "Terrace House" name, architectural design and instruments of service and all rights to the branding, logo and design in connection with the same.

(dd) "**Interim Period**" means the period commencing on the Execution Date until and including the Closing Date.

(ee) "**Land Title Office**" means the Land Title and Survey Authority of British Columbia, land title office applicable to the Lands.

(ff) "**Lands**" has the meaning given to it in Recital A.

(gg) "**Liability**" means any debts, claim, liability, duty, responsibility, obligations, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, or due or to become due and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(hh) "**LOI**" has the meaning given to it in Recital C.

(ii) "**LP Agreement**" means the limited partnership agreement of Evergreen House Development Limited Partnership made as of June 30, 2014 and restated as of March 13, 2015 between those persons who from time to time execute the agreement and become a limited partner, as limited partners, and the GP, as general partner, as further amended and restated, modified or supplemented from time to time.

(jj) "**Material Loss**" means the loss or damage to or destruction of the Property or any part of it to such an extent that the replacement or repair of it cannot be substantially completed: (i) at a cost of less than $1,000,000.00; or (ii) within six (6) months of the occurrence.

(kk) "**Monitor**" means Ernst & Young Inc., in its capacity as monitor of the CCAA Proceedings or such other monitor or monitors as are appointed by the Court from time to time in connection with the CCAA Proceedings.

(ll) "**Order**" means an order of the Court.

(mm) "**Original Purchase Agreement**" has the meaning given to it under Recital D.

(nn) "**Permitted Encumbrances**" means the Encumbrances set out in Part 2 of Schedule A.

(oo) "**Plans, Permits and Approvals**" means: (i) all plans and specifications pertaining to the construction of the Project, including, without limitation, all structural, architectural, mechanical, electrical, landscape and interior design and specifications for the Project; and (ii) all planning approvals, permits, licences, development agreements, crane swing, underpinning and airspace agreements with respect to the Project.

(pp) "**Pre-Sale Contracts**" means each of those agreements between the Vendor and a Buyer in respect of the purchase and sale of one or more condominium units at the Property. For greater certainty, a Pre-Sale Contract is not a Contract.

(qq) "**Project**" means the construction and development of the Building on the Lands.

(rr) "**Property**" means the Lands and the Buildings.

(ss) “**Purchase Price**” means subject to Section 5.4, $21,500,000.00, exclusive of any applicable taxes.

(tt) “**Purchased Assets**” means:

(i) in the event that a Reverse Vesting Order is granted by the Court:

(A) the Shares; and

(B) all of the Limited Partnership’s right, title and interest, in and to the following assets and properties:

(I) the Property;

(II) the Chattels;

(III) the Approved Contracts;

(IV) the Title Contracts;

(V) the Plans, Permits and Approvals;

(VI) the Warranties;

(VII) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property;

(VIII) all insurance and new home warranties obtained in connection with the Project; and

(IX) all marketing materials prepared in connection with the Project,

excluding, for certainty, the Excluded Assets; or

(ii) in the event that an Approval and Vesting Order is granted by the Court:

(A) all of the Vendor’s right, title and interest, in and to the following assets and properties:

(I) the Property;

(II) the Chattels;

(III) the Approved Contracts;

(IV) the Title Contracts;

(V) the Plans, Permits and Approvals;

(VI) the Warranties;

(VII) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property;

(VIII) all insurance and new home warranties obtained in connection with the Project; and

(IX) all marketing materials prepared in connection with the Project,

excluding, for certainty, the Excluded Assets.

(uu) "**Purchaser's Solicitors**" means Lawson Lundell LLP or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and written notice of which is provided to the Vendor.

(vv) "**Receivables**" means the Vendor's interest in all receivables including, without limitation, receivables relating to amounts owed by a Buyer in connection with a Pre-Sale Contract, any grants, subsidies (including the Canada Emergency Wage Subsidy), tax relief or gifts or any other receivable.

(ww) "**Reverse Vesting Order**" has the meaning given to it in Section 8.3(a)(i).

(xx) "**Shares**" means all of the issued and outstanding shares in the capital of the GP.

(yy) "**ShellCo**" means that entity, appointed by the Vendor in connection with a Reverse Vesting Order, to which all Excluded Assets will be transferred by the Vendor in connection with the closing of the transactions contemplated herein and that will replace the GP in its role as general partner of the Limited Partnership. ShellCo will be a subsidiary of GP, brought into the CCAA Proceedings and subsequently assigned into bankruptcy.

(zz) "**Specified Date**" has the meaning given to it in Section 11.13.

(aaa) "**Title Contracts**" means, collectively, those agreements and instruments affecting the Property or any part thereof, including without limitation, the Permitted Encumbrances and any municipal site plan and development agreements, crane swing, underpinning and airspace agreements, common use agreements and easement agreements, concession or other agreements with any governmental authority or other public authorities having jurisdiction, and any new agreements of similar nature respecting the Property or any part thereof (other than the Contracts or Approved Contracts). For greater certainty, a Title Contract is not a Contract.

(bbb) "**Vendor's Solicitors**" means Bennett Jones LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and written notice of which is provided to the Purchaser.

(ccc) "**Warranties**" means all subsisting warranties and guarantees in connection with the Project or any part thereof that are assignable without consent and in effect on the Closing Date.

ARTICLE 2 – PURCHASE AND SALE

2.1 Agreement of Purchase and Sale. Subject to the terms and conditions of this Agreement, the Vendor agrees to sell and the Purchaser agrees to purchase the Purchased Assets for the Purchase Price on the Closing Date free and clear of all Encumbrances, except for the Permitted Encumbrances.

2.2 Payment of Purchase Price. The Purchase Price for the Purchased Assets will be paid by the Purchaser as follows:

(a) by a first deposit of $50,000.00 paid to the Vendor's Solicitors by wire transfer;

(b) by a second deposit of $1,850,000.00 paid to the Vendor's Solicitors by wire transfer; and

(c) by payment of the balance (the "**Balance**") of the Purchase Price, as adjusted in accordance with Article 5, on the Closing Date as provided in Article 9.

The parties hereby acknowledge and agree that, under the Original Purchase Agreement, the Purchaser paid the Deposit referred to in Sections 2.2(a) and 2.2(b) above to the Vendor's Solicitors, which sums shall continue to be held by the Vendor's Solicitors in trust pending completion or other termination of this Agreement. Any interest earned on the Deposit paid pursuant to the Original Purchase Agreement shall be dealt with in accordance with this Agreement.

2.3 Deposit. The Vendor shall cause the Vendor's Solicitors to: (i) deposit the Deposit in an interest bearing trust account promptly following receipt of the Deposit; and (ii) pay the Deposit and any interest that may accrue on it only as set out in this Agreement or as directed in writing by the Vendor and the Purchaser or as directed by a court of competent jurisdiction. The Vendor shall cause the Vendor's Solicitors to pay the Deposit to:

(a) the Vendor without interest (less the $10.00 paid by the Vendor to the Purchaser pursuant to Section 8.6):

(i) on account of the Purchase Price on the Closing Date as set out in Article 9; or

(ii) as liquidated damages upon the default of the Purchaser if the Purchaser is in default of its obligation to complete the transactions contemplated by this Agreement, unless such default is waived in writing by the Vendor and which payment shall be in full satisfaction of all claims the Vendor may have by reason of such default;

(b) the Purchaser with interest (less the $10.00 paid by the Purchaser to the Vendor pursuant to Section 8.2):

(i) if the Purchaser is not required to complete the transaction contemplated by this Agreement, promptly following the date on which the Purchaser becomes entitled not to complete the transactions contemplated by this Agreement;

(ii) upon the default of the Vendor without prejudice to any other right or remedy of the Purchaser, if the Vendor is in default of its obligation to complete the transactions contemplated by this Agreement, unless such default is waived in writing by the Purchaser and provided that the maximum aggregate liability of the Vendor in connection with such a default is limited and shall not exceed an amount equal to the Deposit; or

(iii) if any or all of the conditions set out in Sections 8.1 and 8.3 have not been satisfied or waived.

2.4 Allocation of Purchase Price. The parties agree that:

(a) in the event that a Reverse Vesting Order is granted, the Purchase Price shall be allocated among the Purchased Assets as follows: (i) $1.00 to the Shares; (ii) $15,480,000.00 to the Lands and Buildings; and (iii) $6,019,999.00 to the remaining Purchased Assets; and

(b) in the event that an Approval and Vesting Order is granted, the Purchase Price shall be allocated among the Purchased Assets as follows: (i) $15,480,000.00 to the Lands and Buildings; and (ii) $6,020,000.00 to all other Purchased Assets.

ARTICLE 3 – GENERAL COVENANTS

3.1 Covenants of the Vendor. The Vendor:

(a) throughout the Interim Period, will upkeep and maintain the Property in its present condition, reasonable wear and tear excepted, and will manage the Property in a professional and diligent manner and as a careful and prudent owner would do in accordance with current practices in the CCAA Proceedings and in compliance with all applicable laws, regulations and orders;

(b) throughout the Interim Period, will maintain in full force and effect insurance coverage for fire, earthquake and all risks in respect of the Property as well as commercial liability coverage until closing on the Closing Date, in such amounts and on such terms as would a prudent owner;

(c) throughout the Interim Period, will use commercially reasonable efforts to:

(i) obtain all consents, approvals and authorizations that may be required in order to provide the Purchaser with the right to use Intellectual Property for the purposes of the marketing, development and construction of the Project as of the Closing Date;

(ii) obtain an extension of at least six months from the City of Vancouver in connection with the building permit for the Project; and

(iii) obtain reliance letters in favour of the Purchaser in connection with those Consultant Reports that the Purchaser identifies to the Vendor, in writing, not less than fifteen (15) Business Days prior to the Closing Date;

(d) will, if the Vendor has not done so already, deliver to the Purchaser a copy of the Buyer List as soon as reasonably possible following the Execution Date;

(e) from the Execution Date, will not enter into any commitment or agreement or contract, or modify any material terms or terminate any of the Approved Contracts, Permitted Encumbrances, Title Contracts, Plans, Permits and Approvals, or any mortgage or charge relating to the Purchased Assets or that would form an Encumbrance on the Purchased Assets without the prior written consent of the Purchaser, which the Purchaser may withhold in its sole discretion;

(f) will, on or prior to the Closing Date, cancel, disclaim or terminate at its expense all Contracts other than Approved Contracts;

(g) will take or cause to be taken all proper steps and actions and corporate proceedings on its part to enable the Vendor to vest a good and marketable title to the Purchased Assets in the Purchaser free and clear of all Encumbrances except for Permitted Encumbrances and to enable the Vendor to carry out the sale of the Purchased Assets and to execute and deliver this Agreement as valid and binding obligations of the Vendor; and

(h) will promptly notify the Purchaser if the Vendor becomes aware that, after the date of this Agreement, any of its representations or warranties in this Agreement become untrue or incorrect or if any covenants, terms or conditions in this Agreement are breached or cannot be performed.

3.2 Covenants of the Purchaser. The Purchaser will promptly notify the Vendor if the Purchaser becomes aware that, after the date of this Agreement, any of its representations or warranties in this Agreement become untrue or incorrect or if any covenants, terms or conditions in this Agreement are breached or cannot be performed.

ARTICLE 4 – RISK

4.1 Risk. The Purchased Assets will be at the risk of the Vendor until completion of closing on the Closing Date and thereafter at the risk of the Purchaser.

4.2 Material Loss Damage. If there is any Material Loss prior to the passing of risk as set out in Section 4.1, the Purchaser will, within fifteen (15) days following such Material Loss, by notice in writing at its option either:

(a) terminate this Agreement, in which case the Deposit together with accrued interest will be paid to the Purchaser and neither party will be under any further obligation to the other; or

(b) elect to complete the purchase of the Purchased Assets, in which case the insurance proceeds and the right to receive the proceeds of all insurance will be assigned by the Vendor to the Purchaser on the Closing Date and the Purchase Price shall be reduced by the amount of any insurance deductible that has not been paid by the Vendor.

Failure by the Purchaser to so elect within the period set out above will be deemed to be an election to complete the purchase of the Purchased Assets. The Vendor will promptly notify the Purchaser if it becomes aware of any Material Loss.

ARTICLE 5 – ADJUSTMENTS AND RELATED MATTERS

5.1 Adjustments. The Purchase Price payable by the Purchaser to the Vendor for the Purchased Assets will be subject to adjustment. All adjustments with respect to the Purchased Assets, including taxes, utilities, deposits and interest on deposits (if any), and other items normally adjusted between a vendor and purchaser in the sale of similar properties in British Columbia will be adjusted as of the Closing Date so that the Vendor will bear and pay all expenses and receive all income related to the Purchased Assets accruing prior to the Closing Date and the Purchaser will bear and pay all expenses and receive all income related to the Purchased Assets accruing on and after the Closing Date and the Purchase Price will be adjusted accordingly. The Vendor shall cause any water, gas, or electrical meter readings required to make the adjustments herein.

5.2 Statement of Adjustments. A statement of adjustments will be delivered to the Purchaser by the Vendor at least five (5) Business Days prior to the Closing Date and shall have annexed to it complete details of the calculations used by the Vendor to arrive at all debits and credits on the statement of adjustments. On request, the Vendor shall give the Purchaser access to the Vendor's working papers and backup materials in order to confirm the statement of adjustments.

5.3 Re-Adjustment Determination. The parties acknowledge and agree that there will be no re-adjustment after the Closing Date.

5.4 Purchase Price Reduction. In the event that an Approval and Vesting Order (rather than a Reverse Vesting Order) is granted by the Court, the parties agree that the Purchase Price shall be reduced by an amount equal to the amount of property transfer tax payable by the Purchaser in connection with the transfer of the Property to the Purchaser on the Closing Date.

ARTICLE 6 – POSSESSION

6.1 Possession Date. The Purchaser will, upon completion of the purchase and sale have possession of all Purchased Assets as of the Closing Date free and clear of all Encumbrances subject only to the Permitted Encumbrances.

6.2 Non-assignable Assets. If any of the Purchased Assets are not transferable without consent of a third party by the terms of the applicable instruments, the Vendor shall use commercially reasonable efforts to obtain such consent prior to the Closing Date and, if such consent is not obtained by the Closing Date, the Vendor shall use commercially reasonable efforts to obtain an Order in the CCAA Proceedings transferring or assigning, as applicable, such Purchased Assets to the Purchaser. For certainty, any failure to obtain the consent of any such third party will not constitute a default of the Vendor nor will it entitle the Purchaser to terminate this Agreement.

ARTICLE 7 – REPRESENTATIONS AND WARRANTIES

7.1 Vendor's Representations and Warranties. The Vendor represents and warrants to the Purchaser, regardless of any independent investigations that the Purchaser may cause to be made, that as at the date of this Agreement:

(a) the Limited Partnership is a limited partnership formed under the *Partnership Act* (British Columbia) and has the power and authority to own the Purchased Assets, to enter into this Agreement, and to perform its obligations under this Agreement, all of which have been authorized by all necessary proceedings;

(b) the GP is a corporation formed under the *Business Corporations Act* (British Columbia) and has the power and authority to own the Purchased Assets, in its capacity as general partner of the Limited Partnership or in its own capacity, as applicable, to enter into this Agreement, and to perform its obligations under this Agreement, all of which have been authorized by all necessary proceedings;

(c) the Limited Partnership is a Canadian partnership within the meaning of the *Income Tax Act* (Canada); and

(d) the GP is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

7.2 Survival of Vendor's Representations and Warranties. The representations and warranties contained in Section 7.1 will survive the Closing Date and will continue in full force and effect for the benefit of the Purchaser after the Closing Date for a period of 12 months, unless otherwise expressly indicated herein, notwithstanding any independent inquiry or investigation by the Purchaser.

7.3 Purchaser's Representations and Warranties. The Purchaser represents and warrants to the Vendor, regardless of any independent investigation that the Vendor may cause to be made that:

(a) the Purchaser is a corporation incorporated and existing under the laws of British Columbia;

(b) the Purchaser has the corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement;

(c) there is no action or proceeding pending or to the best of the Purchaser's knowledge, threatened against the Purchaser before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform the Purchaser's obligations hereunder;

(d) neither the Purchaser's entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject;

(e) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada); and

(f) the Purchaser is not a foreign entity for the purposes of the *Property Transfer Tax Act* (British Columbia).

7.4 Survival of Purchaser's Representations and Warranties. The representations and warranties contained in Section 7.3 will survive the Closing Date and will continue in full force and effect for the benefit of the Vendor after the Closing Date for a period of 12 months, unless otherwise expressly indicated herein, notwithstanding any independent inquiry or investigation by the Vendor.

7.5 "As Is" Purchase. The Purchaser acknowledges and agrees that:

(a) in entering into this Agreement and completing the transactions contemplated herein, except for the representations and warranties of the Vendor set out in Section 7.1, the Purchaser has relied and will continue to rely solely upon its own due diligence with respect to the Purchased Assets;

(b) the Purchased Assets are being purchased by the Purchaser on an "as is, where is" basis as of the Closing Date and without any representation or warranty, whether expressed or implied by this Agreement or at law, by the Vendor of any nature or kind whatsoever respecting any of the Purchased Assets or any matter relating thereto, except for the representations and warranties of the Vendor set out in Section 7.1 or in the Closing Documents;

(c) except for the representations and warranties of the Vendor set out in Section 7.1 or in the Closing Documents, the Vendor makes no representations or warranties concerning any statements made or information delivered or made available to the Purchaser (whether by the Vendor, the Vendor's Solicitors or any other agents, representatives or advisors of the Vendor or any of their respective affiliates, or any other person) with respect to the Purchased Assets, whether included as part of any due diligence maters or any other information disclosed to the Purchaser or otherwise; and

(d) except as otherwise expressly provided for in this Agreement or in the Closing Documents, the Vendor shall have no obligations or responsibility to the Purchaser after the Closing Date with respect to any matter relating to the Purchased Assets or the condition thereof.

The provisions of this Section shall survive closing or the termination of this Agreement.

ARTICLE 8 – CONDITIONS PRECEDENT

8.1 Purchaser's Conditions. The Purchaser's obligation to complete the transactions contemplated by this Agreement is subject to the following conditions, all of which are for the sole benefit of the Purchaser:

(a) on the Closing Date, the representations and warranties of the Vendor contained in Section 7.1 will be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the Closing Date; and

(b) on the Closing Date, all of the covenants and agreements of the Vendor to be performed on or before the Closing Date pursuant to this Agreement will have been duly performed in all material respects.

If the conditions set out in this Section have not been satisfied by notice in writing from the Purchaser to the Vendor, by the times specified in this Section, the Purchaser may by notice in writing to the Vendor waive satisfaction of such conditions, in whole or in part, without prejudice to any of its other rights under this Agreement and complete the purchase of the Purchased Assets or elect not to complete.

8.2 Consideration for and Nature of Conditions. A portion of the Deposit in the amount of $10.00 represents non-refundable consideration paid by the Purchaser for its right to satisfy or waive the conditions set out in Section 8.1 and Section 8.3 and the Vendor acknowledges the sufficiency in all respects of such consideration. Although the Purchaser's obligation to complete the transaction contemplated by this Agreement is subject to satisfaction or waiver of conditions, those conditions are not conditions to there being a binding agreement of purchase and sale between the parties respecting the Purchased Assets and until the time limited for the satisfaction or waiver of such conditions has expired, this Agreement is not void, voidable, revocable or, except for default, otherwise capable of being terminated by either of the parties.

8.3 Mutual Conditions. The obligation of each of the parties to complete the transactions contemplated by this Agreement is subject to the following mutual conditions, all of which are for the benefit of both the Vendor and the Purchaser:

(a) on or before 5:00 p.m. (Vancouver time) on June 15, 2021, the Vendor has obtained (at the sole cost of the Vendor) an Order or Orders (the "**Final Order**") either:

(i) (A) adding ShellCo as a debtor to the CCAA Proceedings; (B) replacing the GP as the general partner of the Limited Partnership with ShellCo; (C) transferring and assigning all of the Excluded Assets to ShellCo; (D) vesting title to the Purchased Assets (including, without limitation, the Shares) in and to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances; and (E) approving this Agreement and implementing the transactions contemplated herein in accordance with its terms (the "**Reverse Vesting Order**"); or

(ii) (A) vesting title to the Purchased Assets (which, for certainty, do not include any shares of the GP) in and to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances and in a form registrable in the Land Title Office; and (B) approving this Agreement and implementing the transactions contemplated herein in accordance with its terms (the "**Approval and Vesting Order**").

8.4 Satisfaction of Mutual Conditions. The parties agree that if each of the Purchaser and the Vendor do not give notice to the other party by the time limited in Section 8.3(a) that such condition is satisfied, then this Agreement will automatically be null and void upon the expiry of such time and the Deposit shall be returned to the Purchaser with interest (if any). For certainty, a failure to satisfy the condition set out in Section 8.3 shall not constitute a default of either party.

8.5 Vendor's Conditions. The Vendor's obligation to complete the transactions contemplated by this Agreement is subject to the following conditions, all of which are for the sole benefit of the Vendor:

(a) on the Closing Date, the representations and warranties of the Purchaser contained in Section 7.3 will be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the Closing Date; and

(b) on the Closing Date, all of the covenants and agreements of the Purchaser to be performed on or before the Closing Date pursuant to this Agreement will have been duly performed in all material respects.

If the conditions set out in this Section have not been satisfied by notice in writing from the Vendor to the Purchaser, by the times specified in this Section, the Vendor may, with the written consent of the Monitor, by notice in writing to the Purchaser waive satisfaction of such conditions, in whole or in part, without prejudice to any of its other rights under this Agreement and complete the sale of the Purchased Assets or elect not to complete.

8.6 Consideration for and Nature of Conditions. The Vendor hereby pays to the Purchaser the amount of $10.00 representing non-refundable consideration paid by the Vendor for its right to satisfy or waive the conditions set out in Sections 8.3 and 8.5 and the Purchaser acknowledges the sufficiency in all respects of such consideration. Although the Vendor's obligation to complete the transaction contemplated by this Agreement is subject to satisfaction or waiver of conditions, those conditions are not conditions to there being a binding agreement of purchase and sale between the parties respecting the Purchased Assets and until the time limited for the satisfaction or waiver of such conditions has expired, this Agreement is not void, voidable, revocable or, except for default, otherwise capable of being terminated by either of the parties.

8.7 CCAA Proceedings. The Purchaser shall support the application for the Final Order. Each of the parties agrees that the Vendor shall seek a Reverse Vesting Order from the Court as a first option and, failing that, the Vendor shall seek an Approval and Vesting Order from the Court. In the event any variation is sought or leave to appeal is sought, an appeal is taken or a stay pending appeal is requested with respect to the Final Order, the Vendor shall promptly notify the Purchaser of such application for leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or order(s).

8.8 Form of Order. The Vendor or its solicitors will provide the Purchaser and its solicitors with a draft copy of all Orders proposed to be obtained in connection with this Agreement for review and comment at least two (2) days prior to the date that the Vendor applies for such Order(s), and, provided that such amendments are consistent with the terms set out herein, the Vendor will incorporate any reasonable amendments requested by the Purchaser or its solicitors.

8.9 Break Fee. Notwithstanding the delivery of this Agreement by the Purchaser to the Vendor, in the event that the Vendor is unable to obtain the Final Order and elects to proceed with the other offer received from a Prospective Purchaser during the marketing period under the Original Purchase Agreement, then the Purchaser shall be entitled to the Break Fee as set out therein.

ARTICLE 9 – CLOSING

9.1 Closing. The closing of the purchase and sale of the Purchased Assets will commence at 10:00 a.m. (Vancouver time) on the Closing Date as a virtual closing with documents to be exchanged electronically, or at such other time on the Closing Date or in such other format as may be agreed in writing by the Vendor and the Purchaser.

9.2 Vendor's Closing Documents. On or before the Closing Date, the Vendor will deliver, or cause the Vendor's Solicitors to deliver, to the Purchaser's Solicitors in trust to be held in escrow as provided in this Agreement, the following duly executed as applicable and all in a form satisfactory to the Purchaser, acting reasonably:

(a) Court certified copy of the Final Order and any other Orders as are necessary, all in a form registrable in all necessary offices required to effect the transfer of the Purchased Assets;

(b) letters from legal counsel to the Vendor to the Land Title Survey Authority or other agency as may be required by the Final Order;

(c) a beneficial transfer conveying the beneficial interest in the Property to the Purchaser;

(d) an assignment and assumption of Approved Contracts, Plans, Permits and Approvals wherein the Purchaser assumes the rights and obligations under the Approved Contracts and Plans, Permits and Approvals as of the Closing Date and the Purchaser indemnifies the Vendor for all Liability under the Approved Contracts and Plans, Permits and Approvals arising after the completion of the transactions contemplated herein and the Vendor retains all Liability under the Approved Contracts and Plans, Permits and Approvals arising prior to the Closing Date and indemnifies the Purchaser for all Liability under the Approved Contracts and Plans, Permits and Approvals arising prior to the completion of the transactions contemplated herein;

(e) an assignment and assumption of Permitted Encumbrances and Title Contracts;

(f) an assignment and assumption of the Vendor's right, title and interest, in and to: (i) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property; (ii) all insurance and new home warranties obtained in connection with the Project; and (iii) all marketing materials prepared in connection with the Project;

(g) a bill of sale conveying the Chattels to the Purchaser;

(h) a statement of adjustments pursuant to Article 5;

(i) an assignment of all of the Vendor's rights under any and all Warranties wherein the Purchaser acquires all rights under the Warranties whether arising prior to or after the Closing Date;

(j) in the event that a Reverse Vesting Order is granted: (i) a transfer of the Shares together with all resolutions, certificates and acknowledgements of the Limited Partnership and the GP as may be reasonably required by the Purchaser to effectively transfer the Shares; and (ii) an amendment to the LP Agreement effecting the change in the general partner from the GP to ShellCo, together with all supporting resolutions, certificates and acknowledgements of the Limited Partnership and the GP as may be reasonably required by the Purchaser;

(k) a certificate dated as of the Closing Date of a senior officer of the GP, in its own capacity and as general partner of the Limited Partnership, having knowledge of the facts certifying, on behalf of the GP and the Limited Partnership and without personal liability, that the representations and warranties set out in Section 7.1 are true and correct in all material respects as at the Closing Date and that the Vendor's covenants and agreements to be observed or performed on or before the Closing Date pursuant to the terms of this Agreement have been duly observed and performed in all material respects;

(l) a notice from the Vendor to the other parties under the Approved Contracts giving notice of the sale of the Property;

(m) keys to all units and facilities of the Property to the extent required by the Purchaser; and

(n) such other documents and assurances as may be reasonably required by the Purchaser to give full effect to the intent and meaning of this Agreement.

9.3 Purchaser's Closing Documents. On or before the Closing Date, the Purchaser will deliver, or cause the Purchaser's Solicitors to deliver, to the Vendor's Solicitors in trust to be held in escrow as provided in this Agreement, the following duly executed as applicable:

(a) an assignment and assumption of Approved Contracts, Plans, Permits and Approvals;

(b) an assignment and assumption of Permitted Encumbrances and Title Contracts;

(c) an assignment and assumption of the Vendor's right, title and interest, in and to: (i) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property; (ii) all insurance and new home warranties obtained in connection with the Project; and (iii) all marketing materials prepared in connection with the Project;

(d) the GST Certificate;

(e) a certificate dated as of the Closing Date of a senior officer of the Purchaser having knowledge of the facts certifying, on behalf of the Purchaser and without personal liability, that the representations and warranties set out in Section 7.3 are true and correct in all material respects as at the Closing Date and that the Purchaser's covenants and agreements to be observed or performed on or before the Closing Date pursuant to the terms of this Agreement have been duly observed and performed in all material respects; and

(f) such other documents and assurances as may be reasonably required by the Vendor to give full effect to the intent and meaning of this Agreement.

9.4 Preparation and Form of Documents. The closing documents contemplated in Sections 9.2 and 9.3 (collectively, the "**Closing Documents**"), other than the statement of adjustments in Article 5, the materials required in connection with a Reverse Vesting Order set out in Section 9.2(j), if applicable, and the Final Order, will be prepared by the Purchaser's Solicitors and delivered to the Vendor's Solicitors at least five (5) Business Days before the

Closing Date. The Closing Documents (including the statement of adjustments in Article 5, the materials required in connection with a Reverse Vesting Order set out in Section 9.2(j), if applicable, and the Final Order) will be in a form and substance reasonably satisfactory to the parties. The Vendor shall provide the Purchaser with drafts of all materials to be filed with the Court no later than two (2) days prior to the date of any hearing of the Court regarding the Final Order.

9.5 Payment into Trust. On or before the Closing Date, the Purchaser will pay to the Purchaser's Solicitors in trust, by way of certified cheque, bank draft, or wire transfer, funds in an amount equal to the Balance, as adjusted, less any amount to be advanced to the Purchaser on the Closing Date under any mortgage financing arranged by the Purchaser, as further described in Section 9.9.

9.6 Registration. On the Closing Date, after receipt by the Purchaser's Solicitors of the Closing Documents set out in Section 9.2 and the funds as set out in Section 9.5, and after receipt by the Vendor's Solicitors of the Closing Documents set out in Section 9.3, the Purchaser will cause the Purchaser's Solicitors to file the Final Order in the Land Title Office and any security documents applicable to any mortgage financing arranged by the Purchaser, as further described in Section 9.9.

9.7 Closing Escrow. All Closing Documents, funds, and other items delivered by the parties, except the Final Order (which will be dealt with pursuant to Section 9.6), will be held in trust by the Vendor's Solicitors and the Purchaser's Solicitors until completion of closing on the Closing Date in accordance with this Agreement. Promptly after the filings set out in Section 9.6 and a satisfactory post filing for registration search has been received by the Purchaser's Solicitors showing that title to the Property will be registered in the name of the Purchaser free and clear of all Encumbrances except for the Permitted Encumbrances or any Encumbrances granted by or claimed through the Purchaser, the Closing Documents will be released to the appropriate parties and the Purchaser will cause the Purchaser's Solicitors to pay the Purchase Price, as adjusted, to the Vendor's Solicitors by way of wire transfer.

9.8 Concurrent Requirements. It is a condition of the closing that all matters of payment, execution and delivery of documents by each party to the other and the filing of documents in the Land Title Office as set out in Section 9.6, all pursuant to the terms of this Agreement, will be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the closing until everything required as a condition precedent at the closing has been paid, executed and delivered and all filings set out in Section 9.6 have been completed.

9.9 Purchaser's Financing. If the Purchaser is relying upon a new mortgage to finance the purchase of the Purchased Assets, the Purchaser, while still required to pay the Purchase Price on the Closing Date, may wait to pay the Purchase Price until after the Final Order and new mortgage documents have been filed in the Land Title Office and after receipt of the proceeds of such mortgage financing, but only if, before such filing, the Purchaser has:

(a) made available for tender to the Vendor that portion of the Purchase Price not secured by the new mortgage;

(b) fulfilled all the new mortgagee's conditions for funding except filing the mortgage for registration; and

(c) made available to the Vendor, a lawyer's undertaking to pay the Purchase Price upon the filing of the Final Order and new mortgage documents and the advance by the mortgagee of the mortgage proceeds.

9.10 Payment by Wire Transfer. Notwithstanding anything else contained herein, provided the Purchaser's Solicitors have initiated the wire transfer for the balance of the Purchase Price, as adjusted, to the Vendor's Solicitors on the Closing Date, and provided the Vendor's Solicitors with written confirmation thereof, the Purchaser will be deemed to have paid the balance of the Purchase Price, as adjusted, due to the Vendor if such amount is credited to the Vendor's Solicitors account by 11:00 a.m. (Vancouver time) on the first Business Day following the Closing Date without interest or penalty. If such amount is not received by 11:00 a.m. (Vancouver time) on the first Business Day following the Closing Date, the Purchaser will pay to the Vendor interest at the rate of the prime rate of interest designated from time to time by Royal Bank of Canada plus 3% per annum on such amount until such time as it is received by the Vendor.

9.11 Termination.

(a) Notwithstanding any other provision of this Agreement, if the transactions contemplated by this Agreement do not complete on or prior to August 30, 2021, other than as a result of the default of the Purchaser, then the Purchaser may terminate this Agreement with written notice delivered to the Vendor without any further liability and the Deposit and interest (if any) shall be returned to the Purchaser.

(b) Notwithstanding any other provision of this Agreement, if the transactions contemplated by this Agreement do not complete on or prior to August 30, 2021, other than as a result of the default of the Vendor, then the Vendor may terminate this Agreement with written notice delivered to the Purchaser without any further liability and the Deposit and interest (if any) shall be returned to the Purchaser.

ARTICLE 10 – TAXES

10.1 GST. The Purchaser represents and warrants to Vendor that it is and will be, as of the closing on the Closing Date, registered for the purposes of Part IX of the *Excise Tax Act* (Canada) (the "**ETA**") in accordance with the requirements of Subdivision D of Division V of the ETA and will assume responsibility to account for, report and remit any goods and services tax and harmonized sales tax (collectively, the "**GST**") payable under the ETA in connection with the transaction contemplated in this Agreement. On the Closing Date, the Purchaser will deliver to the Vendor a certificate (the "**GST Certificate**") of a senior officer of the Purchaser certifying, on behalf of the Purchaser and without personal liability (a) that the Purchaser is registered under Part IX of the ETA as of the Closing Date; (b) its registration number; and (c) that the Purchaser will account for, report and remit any GST payable in respect of the purchase of the Purchased Assets in accordance with the ETA. If the Purchaser delivers such GST Certificate, then the Purchaser will not be required to pay to the Vendor, and the Vendor will not be required to collect from the Purchaser nor report or remit, any GST in connection with the transaction contemplated in this Agreement. The Purchaser shall indemnify and hold the Vendor and its directors, officers, employees, advisors and agents harmless from any liability under the ETA arising as a result of any breach of this Section, the GST Certificate or any declaration made therein and such indemnity shall survive the completion of the transactions contemplated herein.

10.2 Provincial Sales Tax. The Purchaser acknowledges that it may be liable to pay provincial sales tax in respect of some or all of the Chattels and, if required, it will report and remit as required by applicable law any such sales tax that is due directly to the applicable taxing authority. The Purchaser shall indemnify and hold the Vendor and its directors, officers, employees, advisors and agents harmless from any liability related to the Vendor's failure to account for, report and remit such provincial sales tax and such indemnity shall survive the completion of the transactions contemplated herein.

10.3 Tax Elections. Notwithstanding the above, the Vendor will cooperate with the Purchaser to execute any election available under applicable law that may reduce or defer the amount or due date of any GST or other tax payable by the Purchaser provided such election will not result in any increased cost or tax liability for the Vendor.

10.4 Other Taxes. The Purchaser shall be responsible for all transfer taxes (subject to an adjustment to the Purchase Price in accordance with Section 5.4), fees and expenses in connection with the registration of the Final Order or transfer of the Purchased Assets.

10.5 Preparation of Tax Returns After Closing. In the event that a Reverse Vesting Order is granted by the Court and the Purchaser acquires the Shares (along with the balance of the Purchased Assets), the Vendor agrees that forthwith following closing on the Closing Date the Vendor will, in consultation with the Purchaser and the Purchaser's professional advisors and accountants, cause income tax and other tax returns consequent to the closing to be prepared for the GP. The Purchaser will be responsible for all reasonable costs related to the preparation and filing of these returns along with the costs of the Purchaser's own accountant and other consultants in reviewing the same. The Vendor will also provide reasonable assistance in preparing and filing all financial statements, tax returns and other documents required by law in respect of any government charges or in respect of any federal, provincial, municipal or other taxing statute for fiscal periods of the GP ending for tax purposes on or before the Closing Date.

ARTICLE 11 – GENERAL

11.1 Further Assurances. Each of the parties will execute and deliver all such further documents and do such further acts and things as may be reasonably required from time to time to give effect to this Agreement.

11.2 No Merger. The execution and delivery of the Closing Documents is not intended to and will not in any way merge or otherwise restrict the terms, covenants, conditions, representations, warranties or provisions made or to be performed or observed by the parties contained in this Agreement other than the obligation to deliver the Closing Documents.

11.3 Entire Agreement. This Agreement constitutes the entire agreement between the Vendor and the Purchaser pertaining to the purchase and sale of the Purchased Assets and supersedes all prior agreements and undertakings, negotiations and discussions, whether oral or written, of the Vendor and the Purchaser, including, for certainty, the LOI and the Original Purchase Agreement (except as set out in Section 8.9 hereof), and there are no representations, warranties, covenants or agreements between the Vendor and Purchaser except as set out in this Agreement.

11.4 Amendment. Subject to Section 11.5, this Agreement may only be altered or amended by an agreement in writing executed by all of the parties.

11.5 Solicitors as Agents. Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors, on behalf of the Purchaser, and by the Vendor's Solicitors, on behalf of the Vendor, and any tender of Closing Documents and the Purchase Price may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

11.6 Notices. Any notice, document or communication required or permitted to be given under this Agreement will be in writing and delivered by hand or electronic transmission as follows:

(a) if to the Purchaser:

Landa Global Acquisitions Ltd.
1550 – 200 Burrard Street
Vancouver, BC, V6C 3L6

Attention: Kevin Cheung
E-mail: kevin@landaglobal.com

with a further copy to the Purchaser's Solicitors:

Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Maxwell P. Carroll
E-mail: mcarroll@lawsonlundell.com

(b) if to the Vendor:

Port Capital Development (EV) Inc. / Evergreen House Development Limited Partnership
c/o Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Attention: Mike Bell
E-mail: mike.bell@parthenon.ey.com

with a further copy to the Vendor's Solicitors:

Bennett Jones LLP
666 Burrard Street, Suite 2500
Vancouver, BC V6C 2X8

Attention: David Gruber and Mark Lewis
E-mail: gruberd@bennettjones.com; lewismv@bennettjones.com

with a further copy to the Monitor's Solicitors:

Blake, Cassels & Graydon LLP
595 Burrard Street, P.O. Box 49314,
Suite 2600, Three Bentall Centre
Vancouver, BC V7X 1L3

Attention: Peter Rubin and Greg Umbach
E-mail: peter.rubin@blakes.com; greg.umbach@blakes.com

or to such other address in Canada as either party may in writing advise. Any notice, document or communication will be deemed to have been given on the Business Day when delivered by hand if delivered prior to 5 p.m. (Vancouver time), otherwise will be deemed to be delivered and received on the next Business Day; or, if made by email, shall be deemed to have been given on the Business Day when transmitted if it is so transmitted prior to 5 p.m. (Vancouver time) on the day of transmittal, otherwise will be deemed to be given and received on the next Business Day.

11.7 Fees. Each of the parties will pay its own legal fees and fees of its consultants. The Purchaser will pay all registration costs and property transfer tax payable in connection with its purchase of the Purchased Assets, subject to an adjustment to the Purchase Price in accordance with Section 5.4.

11.8 Real Estate Commissions. Each of the Vendor and the Purchaser represents and warrants that it has not made any agreement with any real estate agent or broker regarding payment of any commission in respect of the purchase and sale of the Purchased Assets.

11.9 Waiver of Site Disclosure Statement. The Purchaser waives any right it may have to be provided with, and any requirement for the Vendor to provide, a site disclosure statement for the Property under the *Environmental Management Act* (British Columbia) and the regulations under that act.

11.10 Time. Time is of the essence of this Agreement. If anything is required to be done under this Agreement on a day which is not a Business Day, the same shall be done on the next following Business Day.

11.11 Tender. Unless otherwise set out herein, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money will be tendered by certified cheque, bank draft, or wire transfer.

11.12 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

11.13 Force Majeure. If by reason of Excusable Delay, the Vendor or Purchaser is delayed in performing or observing a covenant or obligation hereunder which is to be performed or observed (the "**Specified Date**"), or if either the Purchaser or the Vendor is delayed in satisfying or waiving any of the conditions precedent set out in Sections 8.1, 8.3 or 8.5, the applicable Specified Date will be extended by a period of time equal to the duration of the Excusable Delay, provided that the Vendor or Purchaser, as applicable, notifies the other party in writing prior to the applicable Specified Date, and such notice sets out in detail the date of the commencement and nature of such circumstances (the "**Delay Notice**"), and provided further that the party giving the Delay Notice uses its commercially reasonable efforts to render performance in a timely manner utilizing to such end commercially reasonable and available resources required in the circumstances. If the duration of the Excusable Delay exceeds 60 days from the date of giving a Delay Notice, the party receiving such Delay Notice may terminate this Agreement forthwith, notwithstanding any other provision of this Agreement, by giving written notice of termination to the other party, in which event the parties shall have no further obligations to one another. In determining whether delay is excusable, the party giving the Delay Notice shall be held to a commercially reasonable standard and not to a best efforts standard.

11.14 Assignment. The Purchaser will be entitled to assign its rights and obligations under this Agreement on prior written notice to, but without the consent of the Vendor to an affiliate (within the meaning of the *Business Corporations Act* (British Columbia)) of the Purchaser or to a limited partnership in which the general partner is an affiliate (within the meaning of the *Business Corporations Act* (British Columbia)) of the Purchaser if: (i) the Purchaser delivers written notice of such assignment to the Vendor; (ii) the assignee enters into an agreement pursuant to which the assignee agrees to be bound by all of the obligations and Liability of the Purchaser under this Agreement as if it was the original Purchaser; (iii) the Purchaser is not released from its obligations and Liability under this Agreement until the completion of the transactions contemplated in this Agreement, at which time the assignor will be automatically released from all of its obligations and Liability under this Agreement without the need for any further deliveries or instruments of release; and (iv) such assignment is completed not less than ten (10) Business Days prior to the Closing Date. The Purchaser will not otherwise be entitled to assign its rights and obligations under this Agreement except with the prior written consent of the Vendor, such consent may be arbitrarily withheld or delayed by the Vendor.

11.15 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in it.

11.16 Waiver. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision nor will any waiver constitute a continuing waiver unless otherwise expressed or provided.

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, except their respective directors, officers, employees, agents or advisors, including lawyers, accountants, consultants, bankers and financial advisors (collectively, the "**Authorized Parties**"), 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. The parties will instruct their respective Authorized Parties to comply with the provisions of this Section 11.17 and the parties will be responsible for any breach of the provisions of this Section 11.17 by their respective Authorized Parties. This Section 11.17 does not apply to public information or information in the public domain at the time that such information is obtained, information in the possession of a party not provided by the other party, or information received in good faith from a third party lawfully in possession of the information and not in breach of any confidentiality obligation. The obligations under this Section 11.17 shall terminate as of the second anniversary of the date of this Agreement. The provisions of this Section 11.17 shall supersede the confidentiality provisions of the LOI and any non-disclosure or confidentiality agreements entered into by the parties with respect to the Purchased Assets and the transactions contemplated in this Agreement.

11.18 Public Announcement. The parties agree that no disclosure or announcement, public or otherwise shall be made concerning this Agreement or the transactions contemplated hereunder without the prior consent of both parties, except as otherwise required by applicable law, regulation or regulatory authority or stock exchange rules or requirements. The parties shall consult and cooperate with each other with respect to any proposed announcement of the transactions contemplated hereunder.

11.19 No Registration. The Purchaser will not register this Agreement or notice of this Agreement against title to the Property.

11.20 Currency. All dollar amounts referred to are Canadian dollars.

11.21 Construction. The division and headings of this Agreement are for reference only and are not to affect construction or interpretation.

11.22 Counterparts and Execution. This Agreement may be executed in counterparts and delivered by electronic transmission including by PDF format, and each such counterpart will constitute an original and all such counterparts together will constitute one and the same agreement.

11.23 Schedules. The following schedules are attached to and form a part of this Agreement:

Schedule A – Legal Description and Permitted Encumbrances

11.24 Offer. This Agreement is open for acceptance by the Vendor, in the manner indicated below, until but not after 5:00 p.m. (Vancouver time) on **May 28, 2021**, and if not accepted on or before such time and date will be absolutely null and void. This Agreement may be accepted by the Vendor executing and returning same to the Purchaser, and when accepted, this Agreement will constitute a binding agreement of sale and purchase of the Purchased Assets in accordance with the terms hereof.

[Signature pages follow]

The parties are signing this Agreement as of the date set out above.

ERNST & YOUNG INC. in its capacity as the Monitor of EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP, by its general partner, PORT CAPITAL DEVELOPMENT (EV) INC., and not in its personal capacity

By: ______________________________

Name: Mike Bell
Title: Senior Vice President, Ernst & Young Inc.

ERNST & YOUNG INC. in its capacity as the Monitor of PORT CAPITAL DEVELOPMENT (EV) INC., and not in its personal capacity

By: ______________________________

Name: Mike Bell
Title: Senior Vice President, Ernst & Young Inc.

LANDA GLOBAL ACQUISITIONS LTD.

By: ____________________________________
Name: Kevin Cheung
Title: Authorized Signatory

By: ____________________________________
Name:
Title: Authorized Signatory

SCHEDULE A
LEGAL DESCRIPTION AND PERMITTED ENCUMBRANCES

Part 1 – 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

Part 2 – Permitted Encumbrances

(a) the reservations, limitations, provisions or conditions expressed in the original grants from the Crown of any of the Lands and the statutory exceptions to title currently applicable to the Lands;

(b) 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;

(c) liens for taxes, assessments, rates, duties, charges or levies not at the time due, which relate to obligations or Liability assumed by the Purchaser; and

(d) the Encumbrances listed below in respect of the Lands.

Legal Notations

1. Easement No. BP238635

Charges, Liens and Interests

1. Restrictive Covenant No. R18424
2. Easement and Indemnity Agreement No. J7909
3. Easement No. BP238634

This is Exhibit "B" referred to in the Affidavit of
sworn (or affirmed) before me at Vancouver, B.C.
this 25 day of May 2021.

A Commissioner/Notary Public for the Province of British Columbia

AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT
(TERRACE HOUSE, VANCOUVER, BC)

THIS AGREEMENT is dated for reference May 24, 2021 and is made

AMONG:

PORT CAPITAL DEVELOPMENT (EV) INC., a British Columbia corporation formed under the *Business Corporations Act* (British Columbia)

(the "**GP**")

AND:

EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP, a British Columbia limited partnership formed under the *Partnership Act* (British Columbia)

(the "**Limited Partnership**" and, together with the GP, the "**Vendor**")

AND:

LANDA GLOBAL ACQUISITIONS LTD., a British Columbia company formed under the *Business Corporations Act* (British Columbia)

(the "**Purchaser**")

BACKGROUND:

A. The Vendor is the legal and beneficial owner of the lands and premises legally described in Part 1 of Schedule A (the "**Lands**").

B. The Vendor obtained an initial order of the Supreme Court of British Columbia dated May 29, 2020 under the *Companies' Creditors Arrangement Act*, which among other things, commenced the CCAA Proceedings and granted an initial stay of proceedings in respect of the Vendor.

C. The Purchaser submitted to the Monitor a non-binding letter of intent dated March 1, 2021, which was amended by way of email correspondence sent by the Purchaser on March 4, 2021 (collectively, the "**LOI**"), that contemplated that the parties would commence negotiations of this Agreement on the terms set out in such LOI.

D. By a Purchase and Sale Agreement dated for reference March 25, 2021 (the "**Original Purchase Agreement**"), the Vendor agreed to sell and the Purchaser agreed to purchase all of the Vendor's right, title and interest in and to the Purchased Assets (as defined below) on the terms and conditions set out in the Original Purchase Agreement.

E. The parties have agreed to enter into this Agreement to amend, restate and replace the Original Purchase Agreement.

FOR CONSIDERATION, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree that the Original Purchase Agreement is hereby amended and restated and that save and except as set out in Section 8.9 hereof, this Agreement supersedes and replaces such Original Purchase Agreement as follows:

ARTICLE 1 - INTERPRETATION

1.1 **Definitions**. In this Agreement:

(a) "**Approved Contracts**" means those Contracts entered into by the Vendor and any third party consultants in connection with the Project along with any other material Contracts which the Purchaser approved by way of notice in writing to the Vendor pursuant to the Original Purchase Agreement.

(b) "**Approval and Vesting Order**" has the meaning given to it in Section 8.3(a)(ii).

(c) "**Authorized Parties**" has the meaning given to it in Section 11.17.

(d) "**Balance**" has the meaning given to it in Section 2.2(c).

(e) "**Break Fee**" means $200,000.00, inclusive of any applicable taxes, payable under the Original Purchase Agreement.

(f) "**Buildings**" means all buildings and improvements located on the Lands.

(g) "**Business Day**" means any day that is not a Saturday, Sunday, Boxing Day, Easter Monday or statutory holiday in British Columbia.

(h) "**Buyer**" means a purchaser of one or more condominium units at the Property pursuant to Pre-Sale Contracts.

(i) "**Buyer List**" means a list of all Buyers specifying the name of each Buyer (or if applicable any assignee or sublessee) as stated in the applicable Pre-Sale Contract, such Buyer's address and the amount of any deposits held by or on behalf of the Vendor in accordance such Pre-Sale Contract.

(j) "**CCAA Proceedings**" means the legal proceedings in the Court under the *Companies' Creditors Arrangement Act*, Vancouver Registry No. S-205095.

(k) "**Chattels**" means all of the personal property owned by the Vendor and used in connection with the Project including without limitation, all fixtures, leasehold improvements, glass, personal property, plant, and equipment, inventory including spare parts, furniture whether moveable or built-in, computer hardware, kitchen equipment, tools and supplies, whether the same is located on the Lands or otherwise.

(l) "**Closing Date**" means the date that is the later of (i) the date that is 30 days after the granting of the Final Order; and (ii) the date that all applicable appeal periods in connection with the Final Order have expired.

(m) "**Closing Documents**" has the meaning given to it in Section 9.4.

(n) "**Consultant Reports**" means all consultant reports and studies that were commissioned by the Vendor in connection with the Project.

(o) "**Contracts**" means all contracts or agreements, other than Title Contracts and Pre-Sale Contracts, relating to the use or operation of the Property or any part thereof or the design, development and construction of the Project, including, without limitation, the consulting agreements in connection with the Property or any part thereof made by or on behalf of the Vendor relating to the Property.

(p) "**Court**" means the Supreme Court of British Columbia.

(q) "**Creditors**" means creditors of the Vendor.

(r) "**Delay Notice**" has the meaning given to it in Section 11.13.

(s) "**Deposit**" means the deposits referred to in Sections 2.2(a) and 2.2(b).

(t) "**Encumbrance**" means any legal notation, charge, lien, interest or other encumbrance or title defect of whatever kind or nature, regardless of form, whether or not registered or registrable and whether or not consensual or arising by law (statutory or otherwise), including any mortgage, lien, pledge, debenture, trust deed, assignment by way of security, security interest, conditional sales contract or similar interest or instrument charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein, and any agreement, lease, licence, option or claim, easement, right of way, restriction, execution or other encumbrance (including any notice or other registration in respect of any of the foregoing) affecting title to or the ownership of the Purchased Assets or any part thereof or interest therein.

(u) "**ETA**" has the meaning given to it in Section 10.1.

(v) "**Execution Date**" means the date of this Agreement as first noted above.

(w) "**Excluded Assets**" means: (i) all shares of capital stock or other equity interest in securities in any entity other than the Shares; (ii) any partnership interest in the Limited Partnership; (iii) Contracts which are not Approved Contracts; (iv) all Liability of the Vendor arising prior to the Closing Date including, but not limited to, Liability owed to lenders, service contractors or third parties of any kind including all Liability under the Approved Contracts or Plans, Permits and Approvals; (v) any Liability relating to or arising out of the Excluded Assets including, without limitation, Liability for terminating, not complying with or defaulting under any Contract; (vi) any Liability of the Vendor for taxes resulting from the Vendor's sale of the Purchased Assets; (vii) all employees, employment agreements, executive personnel agreements, officer or director agreements, union contracts, collective agreements, employee wages, employee benefit plans or payments, pension obligations, employee tax withholding obligations, employee health or dental plan obligations, all grievances, arbitrations, employee complaints or claims, labour relations board actions or other employee proceedings and similar obligations of the Vendor; (viii) all Liability for payment of fees for operations of the Purchased Assets up to the Closing Date; (ix) any proceedings, claims or actions commenced in any court initiated against the Vendor or threatened against the Vendor; (x) the costs and expenses and Liability of the Vendor under the CCAA Proceedings; (xi) any Liability for a breach or non-compliance with any applicable law; (xii) the Liability of the Vendor under this Agreement and any other assets, property or obligations which pursuant to the terms and conditions of this Agreement, remain the property of the Vendor after the completion of the transactions contemplated herein including, without limitation, the rights of the Vendor under this Agreement; (xiii) any proceedings, claims or causes of action for the benefit of the Vendor; (xiv) all cash of the Vendor; (xv) Receivables; and (xvi) all Pre-Sale Contracts including, for greater certainty, all deposits provided pursuant to the Pre-Sale Contracts and all claims, causes of action or rights in relation to such deposits.

(x) "**Excusable Delay**" means any delay in the performance or observance by the Vendor or Purchaser of any obligation or act of the Vendor or Purchaser, as applicable, hereunder which occurs as a consequence of or is attributable to any circumstance which is not caused by any default or act of commission or omission of that party and which is beyond the reasonable control of that party, including without limiting the generality of the foregoing, strikes or labour or industrial disturbances (including lock-outs), civil disturbances, acts, orders, legislation, regulations, good faith compliance with an order, directive, guideline or other recommendation of any governmental or other public authorities (including, without limitation, health authorities or occupational safety authorities), acts of public enemies, war, riots, sabotage, blockades, embargoes, shortages of materials and suppliers, shortages of labour, lightning, earthquakes, fire, storms, pandemics, epidemics, quarantines and health emergencies, hurricanes, floods, wash-outs, explosions and acts of God, but excluding, for clarity, the financial circumstances of the Purchaser.

(y) "**Final Order**" has the meaning given to it in Section 8.3(a).

(z) "**Governmental Authority**" means (i) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise), (ii) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government, (iii) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions, and (iv) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

(aa) "**GST**" has the meaning given to it in Section 10.1.

(bb) "**GST Certificate**" has the meaning given to it in Section 10.1.

(cc) "**Intellectual Property**" means all intellectual property and proprietary rights of any kind in connection with the Project, including the "Terrace House" name, architectural design and instruments of service and all rights to the branding, logo and design in connection with the same.

(dd) "**Interim Period**" means the period commencing on the Execution Date until and including the Closing Date.

(ee) "**Land Title Office**" means the Land Title and Survey Authority of British Columbia, land title office applicable to the Lands.

(ff) "**Lands**" has the meaning given to it in Recital A.

(gg) "**Liability**" means any debts, claim, liability, duty, responsibility, obligations, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, or due or to become due and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(hh) "**LOI**" has the meaning given to it in Recital C.

(ii) "**LP Agreement**" means the limited partnership agreement of Evergreen House Development Limited Partnership made as of June 30, 2014 and restated as of March 13, 2015 between those persons who from time to time execute the agreement and become a limited partner, as limited partners, and the GP, as general partner, as further amended and restated, modified or supplemented from time to time.

(jj) "**Material Loss**" means the loss or damage to or destruction of the Property or any part of it to such an extent that the replacement or repair of it cannot be substantially completed: (i) at a cost of less than $1,000,000.00; or (ii) within six (6) months of the occurrence.

(kk) "**Monitor**" means Ernst & Young Inc., in its capacity as monitor of the CCAA Proceedings or such other monitor or monitors as are appointed by the Court from time to time in connection with the CCAA Proceedings.

(ll) "**Order**" means an order of the Court.

(mm) "**Original Purchase Agreement**" has the meaning given to it under Recital D.

(nn) "**Permitted Encumbrances**" means the Encumbrances set out in Part 2 of Schedule A.

(oo) "**Plans, Permits and Approvals**" means: (i) all plans and specifications pertaining to the construction of the Project, including, without limitation, all structural, architectural, mechanical, electrical, landscape and interior design and specifications for the Project; and (ii) all planning approvals, permits, licences, development agreements, crane swing, underpinning and airspace agreements with respect to the Project.

(pp) "**Pre-Sale Contracts**" means each of those agreements between the Vendor and a Buyer in respect of the purchase and sale of one or more condominium units at the Property. For greater certainty, a Pre-Sale Contract is not a Contract.

(qq) "**Project**" means the construction and development of the Building on the Lands.

(rr) "**Property**" means the Lands and the Buildings.

(ss) "**Purchase Price**" means subject to Section 5.4, $21,500,000.00, exclusive of any applicable taxes.

(tt) "**Purchased Assets**" means:

(i) in the event that a Reverse Vesting Order is granted by the Court:

(A) the Shares; and

(B) all of the Limited Partnership's right, title and interest, in and to the following assets and properties:

(I) the Property;

(II) the Chattels;

(III) the Approved Contracts;

(IV) the Title Contracts;

(V) the Plans, Permits and Approvals;

(VI) the Warranties;

(VII) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property;

(VIII) all insurance and new home warranties obtained in connection with the Project; and

(IX) all marketing materials prepared in connection with the Project,

excluding, for certainty, the Excluded Assets; or

(ii) in the event that an Approval and Vesting Order is granted by the Court:

(A) all of the Vendor's right, title and interest, in and to the following assets and properties:

(I) the Property;

(II) the Chattels;

(III) the Approved Contracts;

(IV) the Title Contracts;

(V) the Plans, Permits and Approvals;

(VI) the Warranties;

(VII) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property;

(VIII) all insurance and new home warranties obtained in connection with the Project; and

(IX) all marketing materials prepared in connection with the Project,

excluding, for certainty, the Excluded Assets.

(uu) "**Purchaser's Solicitors**" means Lawson Lundell LLP or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and written notice of which is provided to the Vendor.

(vv) "**Receivables**" means the Vendor's interest in all receivables including, without limitation, receivables relating to amounts owed by a Buyer in connection with a Pre-Sale Contract, any grants, subsidies (including the Canada Emergency Wage Subsidy), tax relief or gifts or any other receivable.

(ww) "**Reverse Vesting Order**" has the meaning given to it in Section 8.3(a)(i).

(xx) "**Shares**" means all of the issued and outstanding shares in the capital of the GP.

(yy) "**ShellCo**" means that entity, appointed by the Vendor in connection with a Reverse Vesting Order, to which all Excluded Assets will be transferred by the Vendor in connection with the closing of the transactions contemplated herein and that will replace the GP in its role as general partner of the Limited Partnership. ShellCo will be a subsidiary of GP, brought into the CCAA Proceedings and subsequently assigned into bankruptcy.

(zz) "**Specified Date**" has the meaning given to it in Section 11.13.

(aaa) "**Title Contracts**" means, collectively, those agreements and instruments affecting the Property or any part thereof, including without limitation, the Permitted Encumbrances and any municipal site plan and development agreements, crane swing, underpinning and airspace agreements, common use agreements and easement agreements, concession or other agreements with any governmental authority or other public authorities having jurisdiction, and any new agreements of similar nature respecting the Property or any part thereof (other than the Contracts or Approved Contracts). For greater certainty, a Title Contract is not a Contract.

(bbb) "**Vendor's Solicitors**" means Bennett Jones LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and written notice of which is provided to the Purchaser.

(ccc) "**Warranties**" means all subsisting warranties and guarantees in connection with the Project or any part thereof that are assignable without consent and in effect on the Closing Date.

ARTICLE 2 – PURCHASE AND SALE

2.1 Agreement of Purchase and Sale. Subject to the terms and conditions of this Agreement, the Vendor agrees to sell and the Purchaser agrees to purchase the Purchased Assets for the Purchase Price on the Closing Date free and clear of all Encumbrances, except for the Permitted Encumbrances.

2.2 Payment of Purchase Price. The Purchase Price for the Purchased Assets will be paid by the Purchaser as follows:

(a) by a first deposit of $50,000.00 paid to the Vendor's Solicitors by wire transfer;

(b) by a second deposit of $1,850,000.00 paid to the Vendor's Solicitors by wire transfer; and

(c) by payment of the balance (the "**Balance**") of the Purchase Price, as adjusted in accordance with Article 5, on the Closing Date as provided in Article 9.

The parties hereby acknowledge and agree that, under the Original Purchase Agreement, the Purchaser paid the Deposit referred to in Sections 2.2(a) and 2.2(b) above to the Vendor's Solicitors, which sums shall continue to be held by the Vendor's Solicitors in trust pending completion or other termination of this Agreement. Any interest earned on the Deposit paid pursuant to the Original Purchase Agreement shall be dealt with in accordance with this Agreement.

2.3 Deposit. The Vendor shall cause the Vendor's Solicitors to: (i) deposit the Deposit in an interest bearing trust account promptly following receipt of the Deposit; and (ii) pay the Deposit and any interest that may accrue on it only as set out in this Agreement or as directed in writing by the Vendor and the Purchaser or as directed by a court of competent jurisdiction. The Vendor shall cause the Vendor's Solicitors to pay the Deposit to:

(a) the Vendor without interest (less the $10.00 paid by the Vendor to the Purchaser pursuant to Section 8.6):

(i) on account of the Purchase Price on the Closing Date as set out in Article 9; or

(ii) as liquidated damages upon the default of the Purchaser if the Purchaser is in default of its obligation to complete the transactions contemplated by this Agreement, unless such default is waived in writing by the Vendor and which payment shall be in full satisfaction of all claims the Vendor may have by reason of such default;

(b) the Purchaser with interest (less the $10.00 paid by the Purchaser to the Vendor pursuant to Section 8.2):

(i) if the Purchaser is not required to complete the transaction contemplated by this Agreement, promptly following the date on which the Purchaser becomes entitled not to complete the transactions contemplated by this Agreement;

(ii) upon the default of the Vendor without prejudice to any other right or remedy of the Purchaser, if the Vendor is in default of its obligation to complete the transactions contemplated by this Agreement, unless such default is waived in writing by the Purchaser and provided that the maximum aggregate liability of the Vendor in connection with such a default is limited and shall not exceed an amount equal to the Deposit; or

(iii) if any or all of the conditions set out in Sections 8.1 and 8.3 have not been satisfied or waived.

2.4 Allocation of Purchase Price. The parties agree that:

(a) in the event that a Reverse Vesting Order is granted, the Purchase Price shall be allocated among the Purchased Assets as follows: (i) $1.00 to the Shares; (ii) $15,480,000.00 to the Lands and Buildings; and (iii) $6,019,999.00 to the remaining Purchased Assets; and

(b) in the event that an Approval and Vesting Order is granted, the Purchase Price shall be allocated among the Purchased Assets as follows: (i) $15,480,000.00 to the Lands and Buildings; and (ii) $6,020,000.00 to all other Purchased Assets.

ARTICLE 3 – GENERAL COVENANTS

3.1 Covenants of the Vendor. The Vendor:

(a) throughout the Interim Period, will upkeep and maintain the Property in its present condition, reasonable wear and tear excepted, and will manage the Property in a professional and diligent manner and as a careful and prudent owner would do in accordance with current practices in the CCAA Proceedings and in compliance with all applicable laws, regulations and orders;

(b) throughout the Interim Period, will maintain in full force and effect insurance coverage for fire, earthquake and all risks in respect of the Property as well as commercial liability coverage until closing on the Closing Date, in such amounts and on such terms as would a prudent owner;

(c) throughout the Interim Period, will use commercially reasonable efforts to:

(i) obtain all consents, approvals and authorizations that may be required in order to provide the Purchaser with the right to use Intellectual Property for the purposes of the marketing, development and construction of the Project as of the Closing Date;

(ii) obtain an extension of at least six months from the City of Vancouver in connection with the building permit for the Project; and

(iii) obtain reliance letters in favour of the Purchaser in connection with those Consultant Reports that the Purchaser identifies to the Vendor, in writing, not less than fifteen (15) Business Days prior to the Closing Date;

(d) will, if the Vendor has not done so already, deliver to the Purchaser a copy of the Buyer List as soon as reasonably possible following the Execution Date;

(e) from the Execution Date, will not enter into any commitment or agreement or contract, or modify any material terms or terminate any of the Approved Contracts, Permitted Encumbrances, Title Contracts, Plans, Permits and Approvals, or any mortgage or charge relating to the Purchased Assets or that would form an Encumbrance on the Purchased Assets without the prior written consent of the Purchaser, which the Purchaser may withhold in its sole discretion;

(f) will, on or prior to the Closing Date, cancel, disclaim or terminate at its expense all Contracts other than Approved Contracts;

(g) will take or cause to be taken all proper steps and actions and corporate proceedings on its part to enable the Vendor to vest a good and marketable title to the Purchased Assets in the Purchaser free and clear of all Encumbrances except for Permitted Encumbrances and to enable the Vendor to carry out the sale of the Purchased Assets and to execute and deliver this Agreement as valid and binding obligations of the Vendor; and

(h) will promptly notify the Purchaser if the Vendor becomes aware that, after the date of this Agreement, any of its representations or warranties in this Agreement become untrue or incorrect or if any covenants, terms or conditions in this Agreement are breached or cannot be performed.

3.2 Covenants of the Purchaser. The Purchaser will promptly notify the Vendor if the Purchaser becomes aware that, after the date of this Agreement, any of its representations or warranties in this Agreement become untrue or incorrect or if any covenants, terms or conditions in this Agreement are breached or cannot be performed.

ARTICLE 4 – RISK

4.1 Risk. The Purchased Assets will be at the risk of the Vendor until completion of closing on the Closing Date and thereafter at the risk of the Purchaser.

4.2 Material Loss Damage. If there is any Material Loss prior to the passing of risk as set out in Section 4.1, the Purchaser will, within fifteen (15) days following such Material Loss, by notice in writing at its option either:

(a) terminate this Agreement, in which case the Deposit together with accrued interest will be paid to the Purchaser and neither party will be under any further obligation to the other; or

(b) elect to complete the purchase of the Purchased Assets, in which case the insurance proceeds and the right to receive the proceeds of all insurance will be assigned by the Vendor to the Purchaser on the Closing Date and the Purchase Price shall be reduced by the amount of any insurance deductible that has not been paid by the Vendor.

Failure by the Purchaser to so elect within the period set out above will be deemed to be an election to complete the purchase of the Purchased Assets. The Vendor will promptly notify the Purchaser if it becomes aware of any Material Loss.

ARTICLE 5 – ADJUSTMENTS AND RELATED MATTERS

5.1 Adjustments. The Purchase Price payable by the Purchaser to the Vendor for the Purchased Assets will be subject to adjustment. All adjustments with respect to the Purchased Assets, including taxes, utilities, deposits and interest on deposits (if any), and other items normally adjusted between a vendor and purchaser in the sale of similar properties in British Columbia will be adjusted as of the Closing Date so that the Vendor will bear and pay all expenses and receive all income related to the Purchased Assets accruing prior to the Closing Date and the Purchaser will bear and pay all expenses and receive all income related to the Purchased Assets accruing on and after the Closing Date and the Purchase Price will be adjusted accordingly. The Vendor shall cause any water, gas, or electrical meter readings required to make the adjustments herein.

5.2 Statement of Adjustments. A statement of adjustments will be delivered to the Purchaser by the Vendor at least five (5) Business Days prior to the Closing Date and shall have annexed to it complete details of the calculations used by the Vendor to arrive at all debits and credits on the statement of adjustments. On request, the Vendor shall give the Purchaser access to the Vendor's working papers and backup materials in order to confirm the statement of adjustments.

5.3 Re-Adjustment Determination. The parties acknowledge and agree that there will be no re-adjustment after the Closing Date.

5.4 Purchase Price Reduction. In the event that an Approval and Vesting Order (rather than a Reverse Vesting Order) is granted by the Court, the parties agree that the Purchase Price shall be reduced by an amount equal to the amount of property transfer tax payable by the Purchaser in connection with the transfer of the Property to the Purchaser on the Closing Date.

ARTICLE 6 – POSSESSION

6.1 Possession Date. The Purchaser will, upon completion of the purchase and sale have possession of all Purchased Assets as of the Closing Date free and clear of all Encumbrances subject only to the Permitted Encumbrances.

6.2 Non-assignable Assets. If any of the Purchased Assets are not transferable without consent of a third party by the terms of the applicable instruments, the Vendor shall use commercially reasonable efforts to obtain such consent prior to the Closing Date and, if such consent is not obtained by the Closing Date, the Vendor shall use commercially reasonable efforts to obtain an Order in the CCAA Proceedings transferring or assigning, as applicable, such Purchased Assets to the Purchaser. For certainty, any failure to obtain the consent of any such third party will not constitute a default of the Vendor nor will it entitle the Purchaser to terminate this Agreement.

ARTICLE 7 – REPRESENTATIONS AND WARRANTIES

7.1 Vendor's Representations and Warranties. The Vendor represents and warrants to the Purchaser, regardless of any independent investigations that the Purchaser may cause to be made, that as at the date of this Agreement:

(a) the Limited Partnership is a limited partnership formed under the *Partnership Act* (British Columbia) and has the power and authority to own the Purchased Assets, to enter into this Agreement, and to perform its obligations under this Agreement, all of which have been authorized by all necessary proceedings;

(b) the GP is a corporation formed under the *Business Corporations Act* (British Columbia) and has the power and authority to own the Purchased Assets, in its capacity as general partner of the Limited Partnership or in its own capacity, as applicable, to enter into this Agreement, and to perform its obligations under this Agreement, all of which have been authorized by all necessary proceedings;

(c) the Limited Partnership is a Canadian partnership within the meaning of the *Income Tax Act* (Canada); and

(d) the GP is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

7.2 Survival of Vendor's Representations and Warranties. The representations and warranties contained in Section 7.1 will survive the Closing Date and will continue in full force and effect for the benefit of the Purchaser after the Closing Date for a period of 12 months, unless otherwise expressly indicated herein, notwithstanding any independent inquiry or investigation by the Purchaser.

7.3 Purchaser's Representations and Warranties. The Purchaser represents and warrants to the Vendor, regardless of any independent investigation that the Vendor may cause to be made that:

(a) the Purchaser is a corporation incorporated and existing under the laws of British Columbia;

(b) the Purchaser has the corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement;

(c) there is no action or proceeding pending or to the best of the Purchaser's knowledge, threatened against the Purchaser before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform the Purchaser's obligations hereunder;

(d) neither the Purchaser's entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject;

(e) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada); and

(f) the Purchaser is not a foreign entity for the purposes of the *Property Transfer Tax Act* (British Columbia).

7.4 Survival of Purchaser's Representations and Warranties. The representations and warranties contained in Section 7.3 will survive the Closing Date and will continue in full force and effect for the benefit of the Vendor after the Closing Date for a period of 12 months, unless otherwise expressly indicated herein, notwithstanding any independent inquiry or investigation by the Vendor.

7.5 "As Is" Purchase. The Purchaser acknowledges and agrees that:

(a) in entering into this Agreement and completing the transactions contemplated herein, except for the representations and warranties of the Vendor set out in Section 7.1, the Purchaser has relied and will continue to rely solely upon its own due diligence with respect to the Purchased Assets;

(b) the Purchased Assets are being purchased by the Purchaser on an "as is, where is" basis as of the Closing Date and without any representation or warranty, whether expressed or implied by this Agreement or at law, by the Vendor of any nature or kind whatsoever respecting any of the Purchased Assets or any matter relating thereto, except for the representations and warranties of the Vendor set out in Section 7.1 or in the Closing Documents;

(c) except for the representations and warranties of the Vendor set out in Section 7.1 or in the Closing Documents, the Vendor makes no representations or warranties concerning any statements made or information delivered or made available to the Purchaser (whether by the Vendor, the Vendor's Solicitors or any other agents, representatives or advisors of the Vendor or any of their respective affiliates, or any other person) with respect to the Purchased Assets, whether included as part of any due diligence maters or any other information disclosed to the Purchaser or otherwise; and

(d) except as otherwise expressly provided for in this Agreement or in the Closing Documents, the Vendor shall have no obligations or responsibility to the Purchaser after the Closing Date with respect to any matter relating to the Purchased Assets or the condition thereof.

The provisions of this Section shall survive closing or the termination of this Agreement.

ARTICLE 8 – CONDITIONS PRECEDENT

8.1 Purchaser's Conditions. The Purchaser's obligation to complete the transactions contemplated by this Agreement is subject to the following conditions, all of which are for the sole benefit of the Purchaser:

(a) on the Closing Date, the representations and warranties of the Vendor contained in Section 7.1 will be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the Closing Date; and

(b) on the Closing Date, all of the covenants and agreements of the Vendor to be performed on or before the Closing Date pursuant to this Agreement will have been duly performed in all material respects.

If the conditions set out in this Section have not been satisfied by notice in writing from the Purchaser to the Vendor, by the times specified in this Section, the Purchaser may by notice in writing to the Vendor waive satisfaction of such conditions, in whole or in part, without prejudice to any of its other rights under this Agreement and complete the purchase of the Purchased Assets or elect not to complete.

8.2 Consideration for and Nature of Conditions. A portion of the Deposit in the amount of $10.00 represents non-refundable consideration paid by the Purchaser for its right to satisfy or waive the conditions set out in Section 8.1 and Section 8.3 and the Vendor acknowledges the sufficiency in all respects of such consideration. Although the Purchaser's obligation to complete the transaction contemplated by this Agreement is subject to satisfaction or waiver of conditions, those conditions are not conditions to there being a binding agreement of purchase and sale between the parties respecting the Purchased Assets and until the time limited for the satisfaction or waiver of such conditions has expired, this Agreement is not void, voidable, revocable or, except for default, otherwise capable of being terminated by either of the parties.

8.3 Mutual Conditions. The obligation of each of the parties to complete the transactions contemplated by this Agreement is subject to the following mutual conditions, all of which are for the benefit of both the Vendor and the Purchaser:

(a) on or before 5:00 p.m. (Vancouver time) on June 15, 2021, the Vendor has obtained (at the sole cost of the Vendor) an Order or Orders (the "**Final Order**") either:

(i) (A) adding ShellCo as a debtor to the CCAA Proceedings; (B) replacing the GP as the general partner of the Limited Partnership with ShellCo; (C) transferring and assigning all of the Excluded Assets to ShellCo; (D) vesting title to the Purchased Assets (including, without limitation, the Shares) in and to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances; and (E) approving this Agreement and implementing the transactions contemplated herein in accordance with its terms (the "**Reverse Vesting Order**"); or

(ii) (A) vesting title to the Purchased Assets (which, for certainty, do not include any shares of the GP) in and to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances and in a form registrable in the Land Title Office; and (B) approving this Agreement and implementing the transactions contemplated herein in accordance with its terms (the "**Approval and Vesting Order**").

8.4 Satisfaction of Mutual Conditions. The parties agree that if each of the Purchaser and the Vendor do not give notice to the other party by the time limited in Section 8.3(a) that such condition is satisfied, then this Agreement will automatically be null and void upon the expiry of such time and the Deposit shall be returned to the Purchaser with interest (if any). For certainty, a failure to satisfy the condition set out in Section 8.3 shall not constitute a default of either party.

8.5 Vendor's Conditions. The Vendor's obligation to complete the transactions contemplated by this Agreement is subject to the following conditions, all of which are for the sole benefit of the Vendor:

(a) on the Closing Date, the representations and warranties of the Purchaser contained in Section 7.3 will be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the Closing Date; and

(b) on the Closing Date, all of the covenants and agreements of the Purchaser to be performed on or before the Closing Date pursuant to this Agreement will have been duly performed in all material respects.

If the conditions set out in this Section have not been satisfied by notice in writing from the Vendor to the Purchaser, by the times specified in this Section, the Vendor may, with the written consent of the Monitor, by notice in writing to the Purchaser waive satisfaction of such conditions, in whole or in part, without prejudice to any of its other rights under this Agreement and complete the sale of the Purchased Assets or elect not to complete.

8.6 Consideration for and Nature of Conditions. The Vendor hereby pays to the Purchaser the amount of $10.00 representing non-refundable consideration paid by the Vendor for its right to satisfy or waive the conditions set out in Sections 8.3 and 8.5 and the Purchaser acknowledges the sufficiency in all respects of such consideration. Although the Vendor's obligation to complete the transaction contemplated by this Agreement is subject to satisfaction or waiver of conditions, those conditions are not conditions to there being a binding agreement of purchase and sale between the parties respecting the Purchased Assets and until the time limited for the satisfaction or waiver of such conditions has expired, this Agreement is not void, voidable, revocable or, except for default, otherwise capable of being terminated by either of the parties.

8.7 CCAA Proceedings. The Purchaser shall support the application for the Final Order. Each of the parties agrees that the Vendor shall seek a Reverse Vesting Order from the Court as a first option and, failing that, the Vendor shall seek an Approval and Vesting Order from the Court. In the event any variation is sought or leave to appeal is sought, an appeal is taken or a stay pending appeal is requested with respect to the Final Order, the Vendor shall promptly notify the Purchaser of such application for leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or order(s).

8.8 Form of Order. The Vendor or its solicitors will provide the Purchaser and its solicitors with a draft copy of all Orders proposed to be obtained in connection with this Agreement for review and comment at least two (2) days prior to the date that the Vendor applies for such Order(s), and, provided that such amendments are consistent with the terms set out herein, the Vendor will incorporate any reasonable amendments requested by the Purchaser or its solicitors.

8.9 Break Fee. Notwithstanding the delivery of this Agreement by the Purchaser to the Vendor, in the event that the Vendor is unable to obtain the Final Order and elects to proceed with the other offer received from a Prospective Purchaser during the marketing period under the Original Purchase Agreement, then the Purchaser shall be entitled to the Break Fee as set out therein.

ARTICLE 9 – CLOSING

9.1 Closing. The closing of the purchase and sale of the Purchased Assets will commence at 10:00 a.m. (Vancouver time) on the Closing Date as a virtual closing with documents to be exchanged electronically, or at such other time on the Closing Date or in such other format as may be agreed in writing by the Vendor and the Purchaser.

9.2 Vendor's Closing Documents. On or before the Closing Date, the Vendor will deliver, or cause the Vendor's Solicitors to deliver, to the Purchaser's Solicitors in trust to be held in escrow as provided in this Agreement, the following duly executed as applicable and all in a form satisfactory to the Purchaser, acting reasonably:

(a) Court certified copy of the Final Order and any other Orders as are necessary, all in a form registrable in all necessary offices required to effect the transfer of the Purchased Assets;

(b) letters from legal counsel to the Vendor to the Land Title Survey Authority or other agency as may be required by the Final Order;

(c) a beneficial transfer conveying the beneficial interest in the Property to the Purchaser;

(d) an assignment and assumption of Approved Contracts, Plans, Permits and Approvals wherein the Purchaser assumes the rights and obligations under the Approved Contracts and Plans, Permits and Approvals as of the Closing Date and the Purchaser indemnifies the Vendor for all Liability under the Approved Contracts and Plans, Permits and Approvals arising after the completion of the transactions contemplated herein and the Vendor retains all Liability under the Approved Contracts and Plans, Permits and Approvals arising prior to the Closing Date and indemnifies the Purchaser for all Liability under the Approved Contracts and Plans, Permits and Approvals arising prior to the completion of the transactions contemplated herein;

(e) an assignment and assumption of Permitted Encumbrances and Title Contracts;

(f) an assignment and assumption of the Vendor's right, title and interest, in and to: (i) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property; (ii) all insurance and new home warranties obtained in connection with the Project; and (iii) all marketing materials prepared in connection with the Project;

(g) a bill of sale conveying the Chattels to the Purchaser;

(h) a statement of adjustments pursuant to Article 5;

(i) an assignment of all of the Vendor's rights under any and all Warranties wherein the Purchaser acquires all rights under the Warranties whether arising prior to or after the Closing Date;

(j) in the event that a Reverse Vesting Order is granted: (i) a transfer of the Shares together with all resolutions, certificates and acknowledgements of the Limited Partnership and the GP as may be reasonably required by the Purchaser to effectively transfer the Shares; and (ii) an amendment to the LP Agreement effecting the change in the general partner from the GP to ShellCo, together with all supporting resolutions, certificates and acknowledgements of the Limited Partnership and the GP as may be reasonably required by the Purchaser;

(k) a certificate dated as of the Closing Date of a senior officer of the GP, in its own capacity and as general partner of the Limited Partnership, having knowledge of the facts certifying, on behalf of the GP and the Limited Partnership and without personal liability, that the representations and warranties set out in Section 7.1 are true and correct in all material respects as at the Closing Date and that the Vendor's covenants and agreements to be observed or performed on or before the Closing Date pursuant to the terms of this Agreement have been duly observed and performed in all material respects;

(l) a notice from the Vendor to the other parties under the Approved Contracts giving notice of the sale of the Property;

(m) keys to all units and facilities of the Property to the extent required by the Purchaser; and

(n) such other documents and assurances as may be reasonably required by the Purchaser to give full effect to the intent and meaning of this Agreement.

9.3 Purchaser's Closing Documents. On or before the Closing Date, the Purchaser will deliver, or cause the Purchaser's Solicitors to deliver, to the Vendor's Solicitors in trust to be held in escrow as provided in this Agreement, the following duly executed as applicable:

(a) an assignment and assumption of Approved Contracts, Plans, Permits and Approvals;

(b) an assignment and assumption of Permitted Encumbrances and Title Contracts;

(c) an assignment and assumption of the Vendor's right, title and interest, in and to: (i) subject to such transfer being approved by the necessary parties in accordance with Section 3.1(c)(i), the Intellectual Property; (ii) all insurance and new home warranties obtained in connection with the Project; and (iii) all marketing materials prepared in connection with the Project;

(d) the GST Certificate;

(e) a certificate dated as of the Closing Date of a senior officer of the Purchaser having knowledge of the facts certifying, on behalf of the Purchaser and without personal liability, that the representations and warranties set out in Section 7.3 are true and correct in all material respects as at the Closing Date and that the Purchaser's covenants and agreements to be observed or performed on or before the Closing Date pursuant to the terms of this Agreement have been duly observed and performed in all material respects; and

(f) such other documents and assurances as may be reasonably required by the Vendor to give full effect to the intent and meaning of this Agreement.

9.4 Preparation and Form of Documents. The closing documents contemplated in Sections 9.2 and 9.3 (collectively, the "**Closing Documents**"), other than the statement of adjustments in Article 5, the materials required in connection with a Reverse Vesting Order set out in Section 9.2(j), if applicable, and the Final Order, will be prepared by the Purchaser's Solicitors and delivered to the Vendor's Solicitors at least five (5) Business Days before the

Closing Date. The Closing Documents (including the statement of adjustments in Article 5, the materials required in connection with a Reverse Vesting Order set out in Section 9.2(j), if applicable, and the Final Order) will be in a form and substance reasonably satisfactory to the parties. The Vendor shall provide the Purchaser with drafts of all materials to be filed with the Court no later than two (2) days prior to the date of any hearing of the Court regarding the Final Order.

9.5 Payment into Trust. On or before the Closing Date, the Purchaser will pay to the Purchaser's Solicitors in trust, by way of certified cheque, bank draft, or wire transfer, funds in an amount equal to the Balance, as adjusted, less any amount to be advanced to the Purchaser on the Closing Date under any mortgage financing arranged by the Purchaser, as further described in Section 9.9.

9.6 Registration. On the Closing Date, after receipt by the Purchaser's Solicitors of the Closing Documents set out in Section 9.2 and the funds as set out in Section 9.5, and after receipt by the Vendor's Solicitors of the Closing Documents set out in Section 9.3, the Purchaser will cause the Purchaser's Solicitors to file the Final Order in the Land Title Office and any security documents applicable to any mortgage financing arranged by the Purchaser, as further described in Section 9.9.

9.7 Closing Escrow. All Closing Documents, funds, and other items delivered by the parties, except the Final Order (which will be dealt with pursuant to Section 9.6), will be held in trust by the Vendor's Solicitors and the Purchaser's Solicitors until completion of closing on the Closing Date in accordance with this Agreement. Promptly after the filings set out in Section 9.6 and a satisfactory post filing for registration search has been received by the Purchaser's Solicitors showing that title to the Property will be registered in the name of the Purchaser free and clear of all Encumbrances except for the Permitted Encumbrances or any Encumbrances granted by or claimed through the Purchaser, the Closing Documents will be released to the appropriate parties and the Purchaser will cause the Purchaser's Solicitors to pay the Purchase Price, as adjusted, to the Vendor's Solicitors by way of wire transfer.

9.8 Concurrent Requirements. It is a condition of the closing that all matters of payment, execution and delivery of documents by each party to the other and the filing of documents in the Land Title Office as set out in Section 9.6, all pursuant to the terms of this Agreement, will be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the closing until everything required as a condition precedent at the closing has been paid, executed and delivered and all filings set out in Section 9.6 have been completed.

9.9 Purchaser's Financing. If the Purchaser is relying upon a new mortgage to finance the purchase of the Purchased Assets, the Purchaser, while still required to pay the Purchase Price on the Closing Date, may wait to pay the Purchase Price until after the Final Order and new mortgage documents have been filed in the Land Title Office and after receipt of the proceeds of such mortgage financing, but only if, before such filing, the Purchaser has:

(a) made available for tender to the Vendor that portion of the Purchase Price not secured by the new mortgage;

(b) fulfilled all the new mortgagee's conditions for funding except filing the mortgage for registration; and

(c) made available to the Vendor, a lawyer's undertaking to pay the Purchase Price upon the filing of the Final Order and new mortgage documents and the advance by the mortgagee of the mortgage proceeds.

9.10 Payment by Wire Transfer. Notwithstanding anything else contained herein, provided the Purchaser's Solicitors have initiated the wire transfer for the balance of the Purchase Price, as adjusted, to the Vendor's Solicitors on the Closing Date, and provided the Vendor's Solicitors with written confirmation thereof, the Purchaser will be deemed to have paid the balance of the Purchase Price, as adjusted, due to the Vendor if such amount is credited to the Vendor's Solicitors account by 11:00 a.m. (Vancouver time) on the first Business Day following the Closing Date without interest or penalty. If such amount is not received by 11:00 a.m. (Vancouver time) on the first Business Day following the Closing Date, the Purchaser will pay to the Vendor interest at the rate of the prime rate of interest designated from time to time by Royal Bank of Canada plus 3% per annum on such amount until such time as it is received by the Vendor.

9.11 Termination.

(a) Notwithstanding any other provision of this Agreement, if the transactions contemplated by this Agreement do not complete on or prior to August 30, 2021, other than as a result of the default of the Purchaser, then the Purchaser may terminate this Agreement with written notice delivered to the Vendor without any further liability and the Deposit and interest (if any) shall be returned to the Purchaser.

(b) Notwithstanding any other provision of this Agreement, if the transactions contemplated by this Agreement do not complete on or prior to August 30, 2021, other than as a result of the default of the Vendor, then the Vendor may terminate this Agreement with written notice delivered to the Purchaser without any further liability and the Deposit and interest (if any) shall be returned to the Purchaser.

ARTICLE 10 – TAXES

10.1 GST. The Purchaser represents and warrants to Vendor that it is and will be, as of the closing on the Closing Date, registered for the purposes of Part IX of the *Excise Tax Act* (Canada) (the "**ETA**") in accordance with the requirements of Subdivision D of Division V of the ETA and will assume responsibility to account for, report and remit any goods and services tax and harmonized sales tax (collectively, the "**GST**") payable under the ETA in connection with the transaction contemplated in this Agreement. On the Closing Date, the Purchaser will deliver to the Vendor a certificate (the "**GST Certificate**") of a senior officer of the Purchaser certifying, on behalf of the Purchaser and without personal liability (a) that the Purchaser is registered under Part IX of the ETA as of the Closing Date; (b) its registration number; and (c) that the Purchaser will account for, report and remit any GST payable in respect of the purchase of the Purchased Assets in accordance with the ETA. If the Purchaser delivers such GST Certificate, then the Purchaser will not be required to pay to the Vendor, and the Vendor will not be required to collect from the Purchaser nor report or remit, any GST in connection with the transaction contemplated in this Agreement. The Purchaser shall indemnify and hold the Vendor and its directors, officers, employees, advisors and agents harmless from any liability under the ETA arising as a result of any breach of this Section, the GST Certificate or any declaration made therein and such indemnity shall survive the completion of the transactions contemplated herein.

10.2 Provincial Sales Tax. The Purchaser acknowledges that it may be liable to pay provincial sales tax in respect of some or all of the Chattels and, if required, it will report and remit as required by applicable law any such sales tax that is due directly to the applicable taxing authority. The Purchaser shall indemnify and hold the Vendor and its directors, officers, employees, advisors and agents harmless from any liability related to the Vendor's failure to account for, report and remit such provincial sales tax and such indemnity shall survive the completion of the transactions contemplated herein.

10.3 Tax Elections. Notwithstanding the above, the Vendor will cooperate with the Purchaser to execute any election available under applicable law that may reduce or defer the amount or due date of any GST or other tax payable by the Purchaser provided such election will not result in any increased cost or tax liability for the Vendor.

10.4 Other Taxes. The Purchaser shall be responsible for all transfer taxes (subject to an adjustment to the Purchase Price in accordance with Section 5.4), fees and expenses in connection with the registration of the Final Order or transfer of the Purchased Assets.

10.5 Preparation of Tax Returns After Closing. In the event that a Reverse Vesting Order is granted by the Court and the Purchaser acquires the Shares (along with the balance of the Purchased Assets), the Vendor agrees that forthwith following closing on the Closing Date the Vendor will, in consultation with the Purchaser and the Purchaser's professional advisors and accountants, cause income tax and other tax returns consequent to the closing to be prepared for the GP. The Purchaser will be responsible for all reasonable costs related to the preparation and filing of these returns along with the costs of the Purchaser's own accountant and other consultants in reviewing the same. The Vendor will also provide reasonable assistance in preparing and filing all financial statements, tax returns and other documents required by law in respect of any government charges or in respect of any federal, provincial, municipal or other taxing statute for fiscal periods of the GP ending for tax purposes on or before the Closing Date.

ARTICLE 11 – GENERAL

11.1 Further Assurances. Each of the parties will execute and deliver all such further documents and do such further acts and things as may be reasonably required from time to time to give effect to this Agreement.

11.2 No Merger. The execution and delivery of the Closing Documents is not intended to and will not in any way merge or otherwise restrict the terms, covenants, conditions, representations, warranties or provisions made or to be performed or observed by the parties contained in this Agreement other than the obligation to deliver the Closing Documents.

11.3 Entire Agreement. This Agreement constitutes the entire agreement between the Vendor and the Purchaser pertaining to the purchase and sale of the Purchased Assets and supersedes all prior agreements and undertakings, negotiations and discussions, whether oral or written, of the Vendor and the Purchaser, including, for certainty, the LOI and the Original Purchase Agreement (except as set out in Section 8.9 hereof), and there are no representations, warranties, covenants or agreements between the Vendor and Purchaser except as set out in this Agreement.

11.4 Amendment. Subject to Section 11.5, this Agreement may only be altered or amended by an agreement in writing executed by all of the parties.

11.5 Solicitors as Agents. Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors, on behalf of the Purchaser, and by the Vendor's Solicitors, on behalf of the Vendor, and any tender of Closing Documents and the Purchase Price may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

11.6 Notices. Any notice, document or communication required or permitted to be given under this Agreement will be in writing and delivered by hand or electronic transmission as follows:

(a) if to the Purchaser:

Landa Global Acquisitions Ltd.
1550 – 200 Burrard Street
Vancouver, BC, V6C 3L6

Attention: Kevin Cheung
E-mail: kevin@landaglobal.com

with a further copy to the Purchaser's Solicitors:

Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Maxwell P. Carroll
E-mail: mcarroll@lawsonlundell.com

(b) if to the Vendor:

Port Capital Development (EV) Inc. / Evergreen House Development Limited Partnership
c/o Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Attention: Mike Bell
E-mail: mike.bell@parthenon.ey.com

with a further copy to the Vendor's Solicitors:

Bennett Jones LLP
666 Burrard Street, Suite 2500
Vancouver, BC V6C 2X8

Attention: David Gruber and Mark Lewis
E-mail: gruberd@bennettjones.com; lewismv@bennettjones.com

with a further copy to the Monitor's Solicitors:

Blake, Cassels & Graydon LLP
595 Burrard Street, P.O. Box 49314,
Suite 2600, Three Bentall Centre
Vancouver, BC V7X 1L3

Attention: Peter Rubin and Greg Umbach
E-mail: peter.rubin@blakes.com; greg.umbach@blakes.com

or to such other address in Canada as either party may in writing advise. Any notice, document or communication will be deemed to have been given on the Business Day when delivered by hand if delivered prior to 5 p.m. (Vancouver time), otherwise will be deemed to be delivered and received on the next Business Day; or, if made by email, shall be deemed to have been given on the Business Day when transmitted if it is so transmitted prior to 5 p.m. (Vancouver time) on the day of transmittal, otherwise will be deemed to be given and received on the next Business Day.

11.7 Fees. Each of the parties will pay its own legal fees and fees of its consultants. The Purchaser will pay all registration costs and property transfer tax payable in connection with its purchase of the Purchased Assets, subject to an adjustment to the Purchase Price in accordance with Section 5.4.

11.8 Real Estate Commissions. Each of the Vendor and the Purchaser represents and warrants that it has not made any agreement with any real estate agent or broker regarding payment of any commission in respect of the purchase and sale of the Purchased Assets.

11.9 Waiver of Site Disclosure Statement. The Purchaser waives any right it may have to be provided with, and any requirement for the Vendor to provide, a site disclosure statement for the Property under the *Environmental Management Act* (British Columbia) and the regulations under that act.

11.10 Time. Time is of the essence of this Agreement. If anything is required to be done under this Agreement on a day which is not a Business Day, the same shall be done on the next following Business Day.

11.11 Tender. Unless otherwise set out herein, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money will be tendered by certified cheque, bank draft, or wire transfer.

11.12 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

11.13 Force Majeure. If by reason of Excusable Delay, the Vendor or Purchaser is delayed in performing or observing a covenant or obligation hereunder which is to be performed or observed (the "**Specified Date**"), or if either the Purchaser or the Vendor is delayed in satisfying or waiving any of the conditions precedent set out in Sections 8.1, 8.3 or 8.5, the applicable Specified Date will be extended by a period of time equal to the duration of the Excusable Delay, provided that the Vendor or Purchaser, as applicable, notifies the other party in writing prior to the applicable Specified Date, and such notice sets out in detail the date of the commencement and nature of such circumstances (the "**Delay Notice**"), and provided further that the party giving the Delay Notice uses its commercially reasonable efforts to render performance in a timely manner utilizing to such end commercially reasonable and available resources required in the circumstances. If the duration of the Excusable Delay exceeds 60 days from the date of giving a Delay Notice, the party receiving such Delay Notice may terminate this Agreement forthwith, notwithstanding any other provision of this Agreement, by giving written notice of termination to the other party, in which event the parties shall have no further obligations to one another. In determining whether delay is excusable, the party giving the Delay Notice shall be held to a commercially reasonable standard and not to a best efforts standard.

11.14 Assignment. The Purchaser will be entitled to assign its rights and obligations under this Agreement on prior written notice to, but without the consent of the Vendor to an affiliate (within the meaning of the *Business Corporations Act* (British Columbia)) of the Purchaser or to a limited partnership in which the general partner is an affiliate (within the meaning of the *Business Corporations Act* (British Columbia)) of the Purchaser if: (i) the Purchaser delivers written notice of such assignment to the Vendor; (ii) the assignee enters into an agreement pursuant to which the assignee agrees to be bound by all of the obligations and Liability of the Purchaser under this Agreement as if it was the original Purchaser; (iii) the Purchaser is not released from its obligations and Liability under this Agreement until the completion of the transactions contemplated in this Agreement, at which time the assignor will be automatically released from all of its obligations and Liability under this Agreement without the need for any further deliveries or instruments of release; and (iv) such assignment is completed not less than ten (10) Business Days prior to the Closing Date. The Purchaser will not otherwise be entitled to assign its rights and obligations under this Agreement except with the prior written consent of the Vendor, such consent may be arbitrarily withheld or delayed by the Vendor.

11.15 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in it.

11.16 Waiver. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision nor will any waiver constitute a continuing waiver unless otherwise expressed or provided.

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, except their respective directors, officers, employees, agents or advisors, including lawyers, accountants, consultants, bankers and financial advisors (collectively, the "**Authorized Parties**"), 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. The parties will instruct their respective Authorized Parties to comply with the provisions of this Section 11.17 and the parties will be responsible for any breach of the provisions of this Section 11.17 by their respective Authorized Parties. This Section 11.17 does not apply to public information or information in the public domain at the time that such information is obtained, information in the possession of a party not provided by the other party, or information received in good faith from a third party lawfully in possession of the information and not in breach of any confidentiality obligation. The obligations under this Section 11.17 shall terminate as of the second anniversary of the date of this Agreement. The provisions of this Section 11.17 shall supersede the confidentiality provisions of the LOI and any non-disclosure or confidentiality agreements entered into by the parties with respect to the Purchased Assets and the transactions contemplated in this Agreement.

11.18 Public Announcement. The parties agree that no disclosure or announcement, public or otherwise shall be made concerning this Agreement or the transactions contemplated hereunder without the prior consent of both parties, except as otherwise required by applicable law, regulation or regulatory authority or stock exchange rules or requirements. The parties shall consult and cooperate with each other with respect to any proposed announcement of the transactions contemplated hereunder.

11.19 No Registration. The Purchaser will not register this Agreement or notice of this Agreement against title to the Property.

11.20 Currency. All dollar amounts referred to are Canadian dollars.

11.21 Construction. The division and headings of this Agreement are for reference only and are not to affect construction or interpretation.

11.22 Counterparts and Execution. This Agreement may be executed in counterparts and delivered by electronic transmission including by PDF format, and each such counterpart will constitute an original and all such counterparts together will constitute one and the same agreement.

11.23 Schedules. The following schedules are attached to and form a part of this Agreement:

Schedule A – Legal Description and Permitted Encumbrances

11.24 Offer. This Agreement is open for acceptance by the Vendor, in the manner indicated below, until but not after 5:00 p.m. (Vancouver time) on **May 28, 2021**, and if not accepted on or before such time and date will be absolutely null and void. This Agreement may be accepted by the Vendor executing and returning same to the Purchaser, and when accepted, this Agreement will constitute a binding agreement of sale and purchase of the Purchased Assets in accordance with the terms hereof.

[Signature pages follow]

The parties are signing this Agreement as of the date set out above.

ERNST & YOUNG INC. in its capacity as the Monitor of EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP, by its general partner, PORT CAPITAL DEVELOPMENT (EV) INC., and not in its personal capacity

By: ______________________________
Name: Mike Bell
Title: Senior Vice President, Ernst & Young Inc.

ERNST & YOUNG INC. in its capacity as the Monitor of PORT CAPITAL DEVELOPMENT (EV) INC., and not in its personal capacity

By: ______________________________
Name: Mike Bell
Title: Senior Vice President, Ernst & Young Inc.

LANDA GLOBAL ACQUISITIONS LTD.

By: ______________________________
Name: Kevin Cheung
Title: Authorized Signatory

By: ______________________________
Name:
Title: Authorized Signatory

SCHEDULE A
LEGAL DESCRIPTION AND PERMITTED ENCUMBRANCES

Part 1 – 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

Part 2 – Permitted Encumbrances

(a) the reservations, limitations, provisions or conditions expressed in the original grants from the Crown of any of the Lands and the statutory exceptions to title currently applicable to the Lands;

(b) 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;

(c) liens for taxes, assessments, rates, duties, charges or levies not at the time due, which relate to obligations or Liability assumed by the Purchaser; and

(d) the Encumbrances listed below in respect of the Lands.

Legal Notations

1. Easement No. BP238635

Charges, Liens and Interests

1. Restrictive Covenant No. R18424

2. Easement and Indemnity Agreement No. J7909

3. Easement No. BP238634

Balpreet Khatra

To: Scott Turner
Subject: RE: Terrace House

This is Exhibit "C" referred to in the Affidavit of Balpreet Khatra sworn (or affirmed) before me at Vancouver, B.C. this 25 day of May 2021.

A Commissioner/Notary Public for the Province of British Columbia

From: Mike Bell <Mike.Bell@parthenon.ey.com>
Sent: May 21, 2021 3:19 PM
To: Jason Eckford <Jason.Eckford@parthenon.ey.com>; Brandon Oye <brandon@landaglobal.com>
Cc: 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: Re: Terrace House

Brandon,

That's fine. We will file our report in advance of Court on Tuesday.

I understand you've retained counsel as well so feel free to seek their advice.

We will however commit to filing it with the Court on a confidential basis if we receive something on Monday.

Thanks,
Mike

Sent from my Bell Samsung device over Canada's largest network.

From: Brandon Oye <[illegible]>
Sent: Friday, May 21, 2021 3:15:38 PM
To: Jason Eckford <[illegible]>; Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: 'Kevin Cheung' <[illegible]>; 'Jin Koh' <[illegible]>
Subject: RE: Terrace House

Thanks Jason – we are continuing to work on. If we proceed, are we able to submit to you on Monday morning?

From: Jason Eckford [mailto:[illegible]@parthenon.ey.com]
Sent: May 21, 2021 2:12 PM
To: Brandon Oye <[illegible]>; Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: 'Kevin Cheung' <[illegible]>; 'Jin Koh' <[illegible]>
Subject: RE: Terrace House

Hi Brandon,

The Court hearing is currently scheduled for [illegible] Tuesday, May 25, 2021 to be held via Teams. Login credentials are below.

If you wish to submit a revised offer and can get it to us over the weekend, we will provide this to the Judge in a confidential report ahead of the scheduled hearing so that it will be considered.

Please let us know if you have any questions.

Thanks,
Jason

The MS teams information is as follows:

Please click the link below to attend the hearing on this matter, set for **Tuesday, May 25, 2021** using MS Teams.

This link is **only provided to counsel and/or self-represented parties**. Please do not share this link with your clients, media or members of the public. For technical reasons, any clients, media and members of the public wishing to attend any hearing by Teams must request access by contacting the Superior Court Judiciary's Communications Officer, the Honourable Bruce Cohen, by email at SCJCommunicationsOfficer@BCCourts.ca. More information is available in the Court's COVID-19 Notice No. 43, available here.

Attendance by audio only is not recommended unless counsel/parties are unable to use the video conference link.

Microsoft Teams meeting
Join on your computer or mobile app
Click here to join the meeting
Join with a video conferencing device
337269798@t.plcm.vc
Video Conference ID: 111 544 842 8
Alternate VTC dialing instructions
Or call in (audio only)
+1 778-725-6348,,812955175# Canada, Vancouver
(844) 636-7837,,812955175# Canada (Toll-free)
Phone Conference ID: 812 955 175#
Find a local number | Reset PIN
Learn More | Meeting options

Final Preparation Checklist

- Check to make sure that you have the MS Teams Client on your computer.
- Check that your video camera and mic is working with MS Teams.
- Check that your computer is connected to the internet directly using an Ethernet cable connection.
- Check that your internet connection is fast enough to run a video hearing smoothly on your computer.

Hearing Day Checklist

- Check that all attendees that you are aware of have been provided the meeting invitation.
- Check that your video area looks professional and ensure that all participants are wearing proper court attire.
- Click on the meeting invite to join the hearing 15 minutes before the hearing commences.
- Preform a final test check in with the court clerk once you are admitted into the courtroom.

Troubleshooting

- Check early and often before the hearing to ensure that your video and mic are working.

- If you are having video or audio issues with Teams prior to the hearing commencing, restart your computer and then MS Teams. If you are still having difficulty hearing or being heard, call into the hearing using the conference number and ID provided. You may leave your (audio-muted) MS Teams video on.
- Report any minor technical problems (echoing, video stutters) in the hearing room chat. This is monitored in real-time. If the issue is serious, inform the Court without delay.

Jason Eckford | Director | Turnaround & Restructuring Strategy
Ernst & Young Inc.
Office:+1 604 648 3671 | Jason.Eckford@parthenon.ey.com

From: Brandon Oye <brandon@landaglobal.com>
Sent: Thursday, May 20, 2021 9:35 AM
To: Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: RE: Terrace House

Thanks – are the hearings done virtually or in-person?

From: Mike Bell [mailto:Mike.Bell@parthenon.ey.com]
Sent: May 19, 2021 5:49 PM
To: Brandon Oye <brandon@landaglobal.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; Kevin Cheung <kevin@landaglobal.com>; Jin Koh <jin@landaglobal.com>
Subject: Re: Terrace House

Tentatively Tuesday which is the date we scheduled to approve the Final Order, but could get delayed.

Sent from my Bell Samsung device over Canada's largest network.

From: Brandon Oye <brandon@landaglobal.com>
Sent: Wednesday, May 19, 2021 5:15:04 PM
To: Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; Kevin Cheung <kevin@landaglobal.com>; Jin Koh <jin@landaglobal.com>
Subject: Re: Terrace House

Thanks - what date will you be presenting the other offer to court?

> On May 19, 2021, at 4:50 PM, Mike Bell <Mike.Bell@parthenon.ey.com> wrote:
>
> 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

Mike Bell | Turnaround and Restructuring Strategy

Senior Vice President | Ernst & Young Inc.
Managing Director | EY-Parthenon
Office: +1 604 899 3566 | mike.bell@parthenon.ey.com

From: Brandon Oye <brandon@landaglobal.com>
Sent: Wednesday, May 19, 2021 1:16 PM
To: Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; Kevin Cheung <kevin@landaglobal.com>; Jin Koh <jin@landaglobal.com>
Subject: Re: Terrace House

Hi Mike - any update for us?

Thanks,

> On May 18, 2021, at 1:43 PM, Brandon Oye <brandon@landaglobal.com> wrote:
>
> Hi Mike,
>
> Any update on process for us to submit a revised offer?
>
> Thanks,
>
> ---
>
> **From:** Mike Bell [mailto:Mike.Bell@parthenon.ey.com]
> **Sent:** May 17, 2021 2:09 PM
> **To:** Brandon Oye <brandon@landaglobal.com>
> **Cc:** Jason Eckford <Jason.Eckford@parthenon.ey.com>; 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
> **Subject:** RE: Terrace House
>
> Brandon,
>
> Does 4PM work?
>
> Thanks,
> Mike

Mike Bell | Turnaround and Restructuring Strategy

Senior Vice President | Ernst & Young Inc.
Managing Director | EY-Parthenon
Office: +1 604 899 3566 | mike.bell@parthenon.ey.com

From: Brandon Oye <brandon@landaglobal.com>
Sent: Monday, May 17, 2021 1:36 PM
To: Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: RE: Terrace House

Hi Mike,

Can you send a time and conference number for this call – Jin and Kevin would also like to join as well.

Thanks,

From: Brandon Oye [mailto:brandon@landaglobal.com]
Sent: May 14, 2021 4:28 PM
To: 'Mike Bell' <Mike.Bell@parthenon.ey.com>
Cc: 'Jason Eckford' <Jason.Eckford@parthenon.ey.com>; 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: RE: Terrace House

Hi Mike,

This is disappointing, but thanks for letting us know.

I'm free most of the day Monday, please call me at your convenience.

Thanks,
Brandon

From: Mike Bell [mailto:Mike.Bell@parthenon.ey.com]
Sent: May 14, 2021 3:09 PM
To: Brandon Oye <brandon@landaglobal.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; Kevin Cheung <kevin@landaglobal.com>; Jin Koh <jin@landaglobal.com>
Subject: RE: Terrace House

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

Mike Bell | Turnaround and Restructuring Strategy

Senior Vice President | Ernst & Young Inc.
Managing Director | EY-Parthenon
Office: +1 604 899 3566 | mike.bell@parthenon.ey.com

From: Brandon Oye <brandon@landaglobal.com>
Sent: Friday, May 14, 2021 2:17 PM
To: Mike Bell <Mike.Bell@parthenon.ey.com>
Cc: Jason Eckford <Jason.Eckford@parthenon.ey.com>; Kevin Cheung <kevin@landaglobal.com>; Jin Koh <jin@landaglobal.com>
Subject: Re: Terrace House

Hi Mike,

It's past 5 back east, Any update/decision yet?

Thanks,
Brandon

> On May 11, 2021, at 5:33 PM, Mike Bell <Mike.Bell@parthenon.ey.com> wrote:
>
> Brandon,
> Thanks for the message, I was Chairing a Creditors' Meeting on a different file and haven't had yet had the chance to pick-up your 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** | Turnaround and Restructuring Strategy
>
> Senior Vice President | Ernst & Young Inc.
> Managing Director | EY-Parthenon
> Office: +1 604 899 3566 | mike.bell@parthenon.ey.com

From: Brandon Oye <brandon@landaglobal.com>
Sent: Tuesday, May 11, 2021 2:40 PM
To: Mike Bell <Mike.Bell@parthenon.ey.com>; Jason Eckford <Jason.Eckford@parthenon.ey.com>
Cc: 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: RE: Terrace House

Hi Mike,

I left you a voice message a little after 11 today – any update on status of our offer?

Thanks,
Brandon

From: Mike Bell [mailto:Mike.Bell@parthenon.ey.com]
Sent: May 10, 2021 2:45 PM
To: Brandon Oye <brandon@landaglobal.com>; Jason Eckford <Jason.Eckford@parthenon.ey.com>
Cc: 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: RE: Terrace House

Brandon,

I missed a call from somebody at Landa but did not receive a message.

Try me on my cell at 604 786 8832 when you get a chance.

Mike Bell | Turnaround and Restructuring Strategy

Senior Vice President | Ernst & Young Inc.
Managing Director | EY-Parthenon
Office: +1 604 899 3566 | mike.bell@parthenon.ey.com

From: Brandon Oye <brandon@landaglobal.com>
Sent: Friday, May 7, 2021 5:07 PM
To: Mike Bell <Mike.Bell@parthenon.ey.com>; Jason Eckford <Jason.Eckford@parthenon.ey.com>
Cc: 'Kevin Cheung' <kevin@landaglobal.com>; 'Jin Koh' <jin@landaglobal.com>
Subject: Terrace House

Hi Mike & Jason,

I believe the marketing period is now over, can you let us know if any offers were received on Terrace House?

Thanks,
Brandon

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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]

---

[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.

---

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,

---

[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]

---

[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]

---

[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

[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]

---

[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.

Solterra's ADDRESS FOR SERVICE is:

Fasken Martineau DuMoulin LLP
Suite 2900, 550 Burrard Street
Vancouver, B.C. V6C 0A3
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DocuSigned by:
Glen Nesbitt
4A0B70DD412E45F...

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)

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

AMENDED APPLICATION RESPONSE

Application response of: Landa Global Acquisitions Ltd. ("**Landa**")

THIS IS A RESPONSE TO the notice of application of the Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (the "**Vendor**"), filed May 20, 2021.

Part 1: ORDERS CONSENTED TO:

NONE

Part 2: ORDERS OPPOSED:

The Application Respondents oppose the granting of the Order sought in paragraph 3(a) (approval of sale to Solterra Acquisitions Corp.("S**olterra**")) of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN:

The Application Respondent takes no position on the granting of any of the Orders sought other than those specifically opposed.

Part 4: FACTUAL BASIS

1. As set out in the Monitor's reports to the Court, Landa made an offer to purchase the Terrace House Project on March 25, 2021 (the "First Landa Offer").

2. The First Landa Offer was for $19,000,000. It was accepted by the Vendor.

3. Pursuant to the terms of the First Landa Offer, Landa has paid a deposit of $1,900,000. This amount is being held by the Monitor.

4. The Vendor's obligations to complete the transactions contemplated by the First Landa Offer were subject to a condition that the Vendor should not have received a "Superior Offer" before May 7, 2021.

5. The First Landa Offer contains a provision that if the Vendor accepts a Superior Offer, and if that Superior Offer results in a concluded agreement of purchase and sale, the Vendor will pay Landa a Break Fee of $200,000. This was approved by the Court.

6. The First Landa Offer contains the following provisions:

> 6.6 **Vendor's Conditions.** The Vendor's obligation to complete the transactions contemplated by this Agreement is subject to the following conditions, all of which are for the sole benefit of the Vendor:
>
> > (a) the Vendor does not receive a Superior Offer on or before 5:00 p.m. (Vancouver time) on the Final Offer Date; ...
>
> If the conditions set out in this Section have not been satisfied by notice in writing from the Vendor to the Purchaser, by the times specified in this Section, the Vendor may, with the written consent of the Monitor, by notice in writing to the Purchaser waive satisfaction of such conditions, in whole or in part, without prejudice to any of its other rights under this Agreement and complete the sale of the Purchased Assets or elect not to complete.
>
> 6.7 **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, 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 (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 if the Vendor receives one or more Superior Offers on or beforethe time limited in Section 8.6(a), the Vendor accepts one of such SuperiorOffers and such Superior Offer becomes unconditional, then: (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 allcommercially 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.

7. In an Affidavit sworn June 4, 2021, Brandon Oye, Landa's CFO, explains the circumstances of how Landa came to know that a Superior Offer had been received by the Trustee and its contents:

10. 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,

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

11. 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".

12. 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, <u>we need to consult with the Secured Creditors before determining whether or not we received a Superior Offer</u>.
>
> 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

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

14. 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

15. 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 the Solterra offer was in fact superior.

16. 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 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?)

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 what the process would be for doing that. We left it that Mr. Bell would consult with counsel and get back to us.

22. 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

8. On May 24th, Landa did deliver a revised, improved offer to the Monitor, which the Monitor did put before the court.

9. Landa intended no unfairness to Solterra in making its improved offer. Indeed, 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.

10. 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.

11. 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.

Part 5: LEGAL BASIS

Price vs. Process

1. Ultimately, the issue before the court is whether it should insist on strict compliance with the process established for bidders in prior orders in this proceeding, or allow Landa to improve on its initial offer and, in so doing, achieve a significantly higher price for the assets of the Petitioners and, hence, greater recovery for the Petitioners' creditors.

2. In *Quest University, Re,* 2020 BCSC1883, this court said (at paras. 175-177):

   175 Section 36(1) of the CCAA allows the court to authorize the sale of adebtor company's assets out of the ordinary course of business. Section 36(3)of the *CCAA* lists the relevant non-exhaustive factors to be considered:

   (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

   (b) whether the monitor approved the process leading to the proposed saleor disposition;

   (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditorsthan a sale or disposition under a bankruptcy;

   (d) the extent to which the creditors were consulted;

   (e) the effects of the proposed sale or disposition on the creditors and otherinterested parties; and

   (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

   176 The well-known considerations identified in *Royal Bank v. SoundairCorp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) at 6 are consistent with and overlap many of the s. 36(3) factors: see *Veris Gold Corp., Re*, 2015 BCSC 1204 (B.C.S.C.) at para. 25, referring to various authorities such as *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 2870 (Ont. S.C.J.) [Commercial List]) at para. *13*. Those considerations include: (i) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers were obtained; and, (iv) whether there has been any unfairness in the sales process.

   177 More generally, in analyzing whether a transaction should be approved, taking into consideration the s. 36(3) and *Soundair* factors, a court is to consider the transaction as a whole and decide whether or not the sale isappropriate, fair and reasonable: *Veris Gold* at para. 23.

3. In *Westcoast Savings Credit Union v. Wachal,* 1988 CarswellBC 547 (BCCA), Mr.Justice McFarlane remarked, in the context of receivership sales (at para. 10):

   10 I agree ... that judicial auctions ought not to be encouraged and thatif they are carried too far, it would create chaos in the commercial world

andreceivers and purchasers would never be sure what was going to happen. But the primary duty of the court is to see that the best possible price is obtained for the property in question. Often, there will be one offer and then there will be other offers made at or about the time the application is readyto be heard. What is a receiver-manager to do in those circumstances? It seems to me that his duty is to put all the information which he has before the court with his recommendations.

In this case, the receiver-manager did his duty. He placed the two offers, the St. Laurent and Ericksteen offers, before the court, informed thecourt of the possibility of the third offer by Anaka's client, and when he appeared before the court, presented the M.S.A. Holdings Ltd. offer. What is a judge to do when faced with that dilemma? Judges in this province havefor quite some time now solved that problem by ordering that sealed bids be filed. That was what was done by Mr. Justice Bouck in *Royal Bank v. Derco Indust. Ltd...*

4. In *Royal Bank v. Vaishnav*, 2005 BCSC 1783, Mr. Justice Burnyeat said, with respect to foreclosure sales.

> 20. While the highest price is an important factor, it is not the sole factor which should influence the Court in exercising its discretion to approve a sale in foreclosure proceedings. For instance, where the Court has fixed a specific bidding process, the integrity of the court process might well override the obtaining of the best price: *Selkirk, Re* (1986), 58 C.B.R. (N.S.)245 (Ont. S.C.); *Royal Bank v. Derco Industries Ltd.* (1988), 24 B.C.L.R. (2d) 202 (B.C. S.C.); *Bank of Nova Scotia v. Yoshikuni Lumber Ltd.* (1992),74 B.C.L.R. (2d) 19 (B.C. C.A.); and *Wachal, supra*. As well, the higher offer may not necessarily be approved where the "improvement on the price is not significant" or where it appears that the higher bid was "less firmly secured than the recommended on", per the comments of Esson J.A. in *A & A Estates, supra*.

5. Similar considerations apply in CCAA proceedings. Thus, in *8450025 Canada Inc. and Teliphone Data Centers Inc. (Re),* 2017 BCSC 1291, Mr. Justice Macintosh observed (at para. 13)

> Finally, from ... paras. 42 and 43 [of Galligan J.A.'s reasons for judgment in *Soundair*], one sees that the primary concern of the party in the Monitor's position is protecting the interests of the creditors, while a secondary but very important consideration is the integrity of the sale process.

6. In *Bank of Montreal v. Renuka Properties Inc.,* 2015 BCSC 2058, a receiver had been appointed by the bank to sell certain assets of the debtor companies, who had operated a pharmacy chain. The receiver established a sales process and the highest bidder, Royal Med, offered $1,025,000 for the assets. After the deadline had passed, a bid of $1,499,000 was received from another party. The

Receiver sought approval of the bid it had accepted, based on the rationale of protecting the integrity of the process. The court considered the *Soundair* factors and said (at paras 41-42):

> [41] Much was made in the submissions before me about maintaining the integrity of the receiver's sale process. I agree with those sentiments, but the rule is not absolute. In [*British Columbia v. Baron Enterprises Ltd.*, 2000 BCCA 317, at para. 40] the Court of Appeal said that deference to the receiver's sale process has its limits:
>
> > ...The passage referred to by the chambers judge in this case was clearly *obiter* but was intended to emphasize that a receiver's decision to enter into an agreement for sale subject to court approval should not be set aside "simply because a later and a higher bid is made". I do not disagree with that point of view provided it is applied within reasonable limits. Where the later offer is higher, the court may refuse to entertain it and to approve the sale recommended by the receiver or other person given conduct of sale. But In practice, that is done only where the improvement on the price is not significant and, in most cases, where it also appears that the late bid is less firmly secured than the recommended one. I will add that the view of Macdonald J.A. depended in large part upon the element of deference which has traditionally been shown to a court appointed receiver who usually is a professional person whose skill and experience in these matters must be established by evidence as a condition of his appointment....
>
> [42] In my view, according deference to the receiver's decision to accept and recommend approval of Royal Med's bid, in circumstances where another bidder appears to be willing to pay 37 percent more, would be to place excessive weight and too high a premium on the deference factor. The authorities make it clear that the interest of the creditors is still the primary factor. For those reasons I decline to approve the sale of the assets to Royal Med.

7. Landa recognizes that may be perceived as, in effect, seeking a "second kick at the can", to use this court's expression in *Cox v. Seymour Village Management Inc.*, 2015 BCSC 275, and that the court should look somewhat "askance" at late bidders. But that said, the court cannot ignore the issue of price, particularly where the improvement in one bid over another is "significant".

8. As the court said in *Cox*:

> [29] Does fairness dictate that, not having been successful, Mosaic should be allowed to have a second kick at the can? As I have said, it 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. Again, this factor gains more prominence because it is likely indicative of the fact that the sales process did not work in the sense of bringing forward persons who were interested in a purchase and giving them an opportunity to participate in a fair sales process. There is no suggestion here that the sales process was unfair and, in particular, that Mosaic did not have the opportunity to present its bid in competition with other offers being submitted, such as from Polygon.

9. Landa is not suggesting that, here, the process put in place on April 16th was unfair. Rather, it is relying mainly on the issue of price. In *Cox*, the price difference was very modest – only about $100,000. Moreover, there were issues regarding the ability of the unsuccessful bidder, Mosaic, to bring about a successful redevelopment of the Seymour Estates property – whereas, here, there are no concerns about either party's ability to complete.

10. At the court's invitation, Landa has now submitted a further revised offer, which improves on its May 24th offer by a further $500,000. Assuming Solterra "stands pat" and does not submit a further offer, Landa's June 4th offer, on its face, exceeds Solterra's by $1,000,000. As well, if the Solterra offer is accepted, Landa will receive a break fee of $200,000. Still further, the closing date for Landa's offer would be 30 days after a final order approving it, whereas Solterra's offer would not close until September 15th, which could translate to an additional interest cost to the Petitioners of more than $250,000, depending on the timing of any final Order and whether there are any appeals.

11. In short, Landa's offer could be worth as much as $1,450,000 more than Solterra's.

12. Solterra argues that, on a percentage basis, this is not a significant difference. It is less than 10% of the price ($20,000,000) offered by Solterra. That may be so, but it is still a lot of money, in absolute terms. For example, it is substantially more than the amount Mr. Justice Blok considered significant (about $500,000) in the *Renuka Properties* matter.

13. Solterra and Landa are both sophisticated parties. The Solterra offer is expressly made subject to this court's approval by way of a vesting order. It also expressly recognizes the risk of another, better offer being accepted by the Court. Thus, clause 8.5 contains this language:

> In the event that an Order is granted ordering the sale of the Purchased Assets to a party other than the Purchaser, the Vendor shall pay to the Purchaser the Purchaser's reasonable costs incurred to the date of the

Order up to a maximum of Fifty Thousand Dollars ($50,000.00), within ten
(10) Business Days after the Vendor's receipt of proceeds of the sale of thePurchased Assets to such other party.

14. Finally, Landa would point out that allowing Landa to bid would be consistent with the terms of the SISP originally approved by this court on June 8, 2020, approximately one year ago, which contemplated that:

> 37. The Monitor, in consultation with the Debtor and the Secured Creditors, may bring one of the Phase 2 Qualified Bids to Court for approval, or may conduct an auction among two or more of the Phase 2 Qualified Bidders and bring the highest auction bid to Court for approval.

15. The process originally contemplated by the SISP may not have unfolded as the parties may have wished at the time, but the court now has the opportunity to substantially increase the ultimate realization price for the Petitioners' assets in a manner that is, it is submitted, consistent with the originally stated desire to have an "auction" process.

The 129 Offer

16. Landa understands that the 129 offer was received by the Monitor prior to the May 7th "Superior Offer" deadline under the Initial Landa PSA. In its Sixth Report to the Court, the Monitor advised the court that it recommended the Solterra offer because it is unconditional, whereas the 129 offer, at that time, was not.

17. Assuming the 129 offer remains conditional, Landa adopts the submissions of Solterra: the court should prefer either Landa's or Solterra's unconditional offers over a conditional one.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Balpreet Singh Khatra sworn May 25, 2021;
2. Affidavit #1 of Brandon Oye sworn June 4, 2021;
3. The Monitors' reports to the Court.

The application respondents estimate that the application will take 2 hours

[X] The application respondents have filed in this proceeding a document that contains the application respondents' address for service.

[ ] The application petitioners has not filed in this proceeding a document that contains an address for service.

The application respondents' ADDRESS FOR SERVICE

is:Turner & Co.
#1600 – 409 Granville
StVancouver, BC V6C
1T2

Attention: Scott A. Turner

Email:

sturner@turnerco.ca

Telephone: 604-336-

3071

Date: 04/JUN/2021

Signature of
lawyer for application respondent
Scott A. Turner

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 14^{th}) 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 7^{th} – although that offer does not appear to have been finalized or accepted until May 13^{th} or 14^{th}. Landa initially had concerns about this delay, and whether, in fact, a binding Superior Offer was received by the deadline of May 7^{th}; 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 25^{th} 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 7^{th}, 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,
>
> 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 11^{th} 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**

SCOTT A. TURNER
Barrister & Solicitor
1400-510 BURRARD STREET
VANCOUVER, B.C. V6C 3A8

This is the 3rd affidavit
of Macario Teodoro Reyes in this case
and was made on 04/JUNE/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, **MACARIO TEODORO REYES**, businessman, of 325 West 4th Avenue, Vancouver, BC V5Y 1H3, SWEAR (OR AFFIRM) THAT:

1. I am a director and officer of Port Capital Group Inc. ("**Port Capital Group**"), the petitioner Port Capital Development (EV) Inc. (the "**General Partner**") and 1296371 B.C. Ltd. ("**129**"), and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.

2. I swear this affidavit to provide certain updates to matters described in my second affidavit, sworn May 21, 2021. Capitalized terms in this affidavit have the meaning given to them in my second affidavit, unless otherwise defined herein.

3. At paragraph 15 of my second affidavit, I outlined the sources of funds that would be used to pay the Interim Financing Facility, and redeem and take an assignment of the loan and security held by CMLS.

4. After further negotiations with Domain, it has issued a Second Revised Commitment Letter, dated June 4, 2021 (the "**Second Domain Commitment Letter**"), in the amount of $14.7 million. Now shown to me and attached hereto as **Exhibit "A"** is a copy of the Second Domain Commitment Letter.

5. The Second Domain Commitment Letter confirms that all material conditions, other than court approval and consent from Aviva, have been satisfied. Fees in the total amount of $342,000 have been paid to Domain to secure an unconditional commitment letter, including the "funding fee" required for Domain to present an offering memorandum to its investors and secure the $14.7 million necessary to fund the proposed loan, which it has now done.

6. Further, I have had extensive discussions with Aviva, which has resulted in Aviva issuing a support letter confirming it will consent to the proposed refinancing, on certain terms. Now shown to me and attached hereto as **Exhibit "B"** is a copy of the Aviva consent.

7. Pursuant to the Aviva consent, the priority among Domain, NumberCo, 129 and Aviva following the re-financing transaction will be as follows:

(a) First, Domain up to the principal amount of $14.7 million;

(b) Second, 129 (in respect of the Deposits), as to 65%, and Aviva, as to 35%, *pro rata* up to the principal amount of $8,005,201

(c) Third, Aviva, for the balance owed to it;

(d) Fourth, NumberCo, for the balance owed to it; and

(e) Fifth, 129, for the balance owed to it.

8. The foregoing effectively amounts to Luz Consuelo Reyes (who is my mother, and the sole director and officer of NumberCo) subordinating the loan from NumberCo, and her $2.8 million deposit, to Aviva. Luz Reyes has consented to this subordination.

9. Attached to my second affidavit were irrevocable directions from the Pre-Sale Purchasers authorizing the use of their deposits in the proposed refinancing transaction. The irrevocable directions provided by 1192706 B.C. Ltd. and 1208596 B.C. Ltd. contained a condition that the direction was subject to, "the consent of the undersigned to release the Deposit after undersigned counsel has reviewed the definitive documents required to effect the Transaction."

10. This condition has now been satisfied. Now shown to me and attached hereto as **Exhibit "C"** is a copy of irrevocable directions from the foregoing Pre-Sale Purchasers with the relevant condition removed.

11. Lastly, NumberCo had previously given an unconditional commitment to fund a loan in the amount of $1.5 million in connection with this refinancing transaction. In order to ensure there are sufficient funds to redeem CMLS in full, NumberCo has agreed to increase the amount of its loan to $2.15 million. Now shown to me and attached hereto as **Exhibit "D"** is a copy of an email from Luz Reyes to myself, confirming the increase. I am informed by Robert Quon, of Dentons, and verily believe the same to be true, that Dentons holds the funds required to advance this loan in trust.

12. The total funding contemplated by the foregoing transaction, including fees pre-paid to Domain, is $24,960,201. This provides sufficient funding to:

(a) pay the remaining fees owing to Domain pursuant to the Revised Commitment Letter, and provide sufficient holdbacks as contemplated therein;

(b) pay the amounts owing to the beneficiaries of the Administration Charge, the Interim Lender, and CMLS, in full; and

(c) reserve $250,000 to pay the break-fees contemplated by the purchase agreements signed by Landa and Solterra, in the event those are payable.

13. Now shown to me and attached hereto as **Exhibit "E"** is a table setting out the sources and uses of funds in connection with the proposed refinancing transaction.

SWORN (OR AFFIRMED) BEFORE ME at Vancouver, BC, on 04/JUNE/2021	
A Commissioner for taking Affidavits within British Columbia	**MACARIO TEODORO REYES**

JORDAN D. SCHULTZ
Barrister & Solicitor
DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver, B.C. V6C 3R8
Telephone (604) 687-4460

DOMAIN FUNDING

Domain Funding
1100-1040 West Georgia St.
Vancouver, BC V6E 4H1
604.681.3000

This is Exhibit " A " referred to in the affidavit of Macario Reyes sworn before me at Vancouver, BC this 9 day of June, 2021

A Commissioner for taking Affidavits for British Columbia

Friday, June 4, 2021

Loan #: 2021-BC011

Evergreen House Development LP
Port Capital Development (EV) Inc.
Port Capital Development Inc.
Mr. Macario Teodoro Reyes
c/o 325 West 4th Avenue,
Vancouver, B.C. V5Y 1H3

E-mail: tobi@portliving.com

Dear Sir:

SECOND REVISED
COMMITMENT LETTER
("2RCL")

Bankers Mortgage Corporation doing business as Domain Funding is pleased to present you with a commitment to provide a loan with terms and conditions described herein and on the attached Schedules (the "Loan").

1. SECURED PROPERTY:

Civic Address:	1250 West Hastings Street, Vancouver B.C.
Legal Description:	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
PIDs:	006-721-397

The above property(s) is referred to herein as the "Secured Property".

2. LENDER/MORTGAGEE:

Name:	**Domain Mortgage Corp.** syndicated in trust for private mortgage investors, and/or nominee.
Address:	1100 – 1040 W. Georgia St. Vancouver, BC V6E 4H1

Hereinafter referred to as the "Lender".

3. BORROWER(S)/MORTGAGOR(S) AND ASSIGNEE(S) AND/OR NOMINEE(S):

Name:	**Evergreen House Development Limited Partnership**
Relationship:	The beneficial owner of the Secured Property
Address:	325 West 4th Avenue, Vancouver, B.C. V5Y 1H3
Name:	**Port Capital Development (EV) Inc.**
Relationship:	The registered owner of the Secured Property and the General Partner of Evergreen House Development Limited Partnership
Address:	325 West 4th Avenue, Vancouver, B.C. V5Y 1H3

4. COVENANTOR(S):

The Lender(s) will require the Loan to be guaranteed by the personal and/or corporate shareholders of the Borrowing Company(s) and/or others (the "Covenantors").

To date the following Covenantors have been identified:

Name:	**Macario Teodoro Reyes**
Relationship to Borrower:	Principal of Port Capital Development Inc.
Address:	#801-2211 Cambie Street, Vancouver, B.C. V5Z 2T5
Name:	**Port Capital Development Inc.**
Relationship to Borrower:	100% shareholder of Port Capital Development (EV) Inc.
Address:	325 West 4th Avenue, Vancouver, B.C. V5Y 1H3

5. LOAN TYPE AND PURPOSE:

To assist in (i) the redemption and repayment of the interim financing ("Interim Financing") provided by Desjardins Financial Security Life Assurance Company ("Desjardins") and, (ii) together with 1296371 B.C. Ltd. (the "Junior Lender"), the purchase and assignment of the existing loans and security (the "Existing Security") provided by CMLS Financial Ltd., as agent for and on behalf of certain lenders (collectively the "Existing Lenders").

The Interim Financing is in the principal amount of $1,287,274.88 (subject to verification), secured by a super-priority court-ordered charge over all assets, undertakings and property of the Borrowers.

The Existing Loan is in the principal amount of $21,233,416.87 (subject to verification).

The Interim Financing and the Existing Loan are secured by the following Mortgages and Assignments of Rents registered on title to the Secured Property:

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

(collectively, the foregoing loans, the "Existing Loan", and the foregoing security interests, are referred to herein as the "Existing Security").

3

6. USES AND SOURCES OF FUNDS:

Loan proceeds to be used in accordance with the following Uses and Sources of Funds budget:

Uses of Funds

Payout CMLS Financial Ltd. (estimate)	$ 21,233,416.87
Payout Desjardins Financial Security Life Assurance Company (estimate)	$ 1,287,274.88
Provision of a Payment Reserve to the CCAA Monitor (estimate)	$ 250,000.00
Domain Mortgage Corp Loan Servicing Fee (0.25% of the Loan amount)	$ 18,375.00
Monthly Interest Reserve (6 months - see below)	$ 866,250.00
Domain Funding Mortgage Broker Fee (2.0% of the Loan amount)	$ 294,000.00
Domain Securities Corp Fund Raising Fee (1.0% of the Loan amount)	$ 147,000.00
Lender's CCAA Reporting Consultant - (estimate)	$ 60,000.00
Lender's legal fees, title insurance, misc., etc. (estimate)	$ 40,000.00
Total Uses of Funds	**$ 24,196,316.75**
Total Uses of Funds (Rounded)	**$ 24,197,000.00**

Sources of Funds

Domain Mortgage Corp. Mortgage Loan Amount (First Loan Segment)	$ 10,500,000.00
Domain Mortgage Corp. Mortgage Loan Amount (Second Loan Segment)	$ 4,200,000.00
Paid Amount of Domain Funding Mortgage Broker Fee	$ 145,000.00
Paid Amount of Lender's legal fee	$ 27,000.00
Additional Equity requirement and/or Junior Lender requirement (est.)	$ 9,325,000.00
Total Sources of Funds	**$ 24,197,000.00**

NOTE 1: The above budget has been prepared by Domain Funding based on information provided by the Borrower(s) and Covenantor(s) and is subject to change.

NOTE 2: All figures listed in above budget are subject to verification and approval by the Lender.

NOTE 3: At the option of the Lender, any Loan proceeds will be controlled and/or disbursed by the Lender or its solicitor for the purposes outlined above or for other Lender-approved purposes.

NOTE 4: Any shortfall of funds to complete the assignment and transfer of the Existing Mortgage is the responsibility of the Borrower(s), Covenantor(s), and 1296371 B.C. Ltd.

NOTE 5: The Borrower(s) will pay $100,000 (or such other amount recommended by the Monitor of the CCAA proceedings pursuant to the Monitor's budget as approved by the Lender) from the Loan proceeds representing a payment to the Monitor on closing to cover anticipated future costs of the Monitor (including their counsel in the CCAA proceeding. The balance of the $250,000 Provision of a Payment Reserve will be held by the Lender in a reserve as against protective disbursements including without limitation monitor's or other costs. If the monitor's costs exceed the amount advanced to the monitor the Borrower(s) shall pay those costs and the Lender shall not be obligated to (but may) pay any additional costs from the said reserve.

NOTE 6: The Borrower(s) will assign $60,000 (or such other amount recommended by the Lender's solicitor) from the Loan proceeds representing a provision for a CCAA Reporting Consultant to provide reporting to and to advise the Lender with respect to the CCAA proceedings.

7. JUNIOR LENDER PARTICIPATION WITHIN THE EXISTING SECURITY:

1296371 B.C. Ltd. will become a Junior-ranking participant in the proposed new ownership of the Existing Security subordinate in all respects to the $14,700,000 aggregate amount of the Loan and will enter into a participation Agreement (the "**Participation and Stand Still Agreement**") with Domain Mortgage Corp. to be prepared by the Lender's Lawyer, or in the alternative, there will be sufficient recapitalization of the Borrower(s) to fund monies required (in addition to the Loan) to refinance the

Existing Lenders and retire the Interim Financing, without participating in the Loan and the related security.

The Participation and Stand Still Agreement will contain a provision allowing the Junior Lender to purchase the Loan and the interest of the Lender in the Existing Security and to transfer the administration of the Existing Security upon payment to the Lender of the amount owing under the Loan and subject to the Lender receiving the minimum interest provisions contained herein and otherwise as required by the Lender's lawyer.

The Participation and Stand Still Agreement will subordinate the Junior Lender to the Lender in all respects and the Lender or the Lender's nominee will administer the Loan and the interest of the Junior Lender in the Existing Security.

The Participation and Stand Still Agreement will contain provision(s) to cause unpaid interest, if and when due, to be made by Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd. and to apply interest due under the Loan exceeding the interest prescribed under the Existing Security to be deducted from the ownership interest of 1296371 B.C. Ltd., and in priority to the ownership interest of 1296371 B.C. Ltd., in the Existing Security.

The standstill provisions of the Participation and Stand Still Agreement will prohibit the Junior Lender from taking any action in respect of the Loan unless and until either:

a) the Loan is repaid in full; or
b) the Junior Lender purchases the Loan and the interest of the Lender from the Lender.

8. LOAN FUNDING DATE:

A date to be determined by the Lender NOT BEFORE June 23, 2021 and NOT AFTER June 30, 2021, subject to the following prior events:

(i) CCAA Monitor and Court to approve assignment and transfer of the Existing Security by June 8, 2021, in a form satisfactory to the Lender

The Borrower(s) acknowledges that interest on the Loan shall accrue from the date that funds are provided by the Lender to its solicitor in preparation for the funding of the Loan, whether or not the Borrower(s) and Covenantor(s) are in a position to draw funds in accordance with the terms and conditions of this Commitment Letter.

9. PAYMENT PROVISIONS:

The Loan will be divided into the following (2) Loan Segments with (2) differing interest rates in recognition of differing risk profiles within the $14,700,000 composition of the Loan.

Loan Amount:	$10,500,000.00 (the "First Loan Segment") $ 4,200,000.00 (the "Second Loan Segment") $14,700,000.00 (the "Loan")

<u>Terms of $10,500,000 First Loan Segment</u>

Term:	6 months from Interest Adjustment Date
Amortization:	Interest Only
Interest Rate:	<u>Up to and including Nov. 30, 2021:</u> The greater of Prime + 8.05% per annum or 10.50% per annum, compounded monthly <u>Commencing Dec. 1, 2021:</u> 12.00% per annum, compounded monthly
Interest Calculation Period:	Monthly

Payment Dates:	1st day of month during Loan Term	
Interest Adjustment Date:	July 1, 2021	
First Payment Date:	August 1, 2021	
Periodic Payment Amounts:	$91,875.00	interest payment
	$ 2,187.50	Loan servicing fee (0.25% of Loan Amount)
	$94,062.50	

Monthly interest payments during the term of the Loan will be made using Monthly Payment Reserve(s) held by the Lender. If and when Monthly Payment Reserve(s) held by the Lender are depleted, interest due under the Loan be made by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd.

Balance Due Date: Jan. 1, 2022

Terms of $4,200,000 Second Loan Segment

Term:	6 months from Interest Adjustment Date.
Amortization:	Interest Only
Interest Rate:	Second Loan Segment:
	Prior to the first day of the last month of the Loan Term:
	18.00% per annum, compounded monthly
	Commencing the first day of the last month of the Loan Term:
	24.00% per annum, compounded monthly
Interest Calculation Period:	Monthly
Payment Dates:	1st day of month during Loan Term
Interest Adjustment Date:	July 1, 2021
First Payment Date:	August 1, 2021

Periodic Payment Amounts:	$ 52,500.00	interest payment
	$ 875.00	Loan servicing fee (0.25% of Loan Amount)
	$ 53,375.00	subtotal

Monthly interest payments during the term of the Loan will be made using Monthly Payment Reserve(s) held by the Lender. If and when Monthly Payment Reserve(s) held by the Lender are depleted, interest due under the Loan be made by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd.

Balance Due Date: Jan. 1, 2022

10. EARLY REPAYMENT TERMS:

The Loan may be repaid in full without penalty provided the Lender has first received payment of Loan Interest and Loan Servicing Fees of not less than $884,625.00. Unless otherwise specified herein, partial repayment of the Loan is not permitted without the written consent of the Lender.

11. **LOAN RESERVE(S):**

The Lender requires the Borrower(s) to assign the following Monthly Payment Reserve to the Lender from the Loan Proceeds (collectively the "Loan Reserve(s)"). Upon payout of the Loan in full, any unused amounts in the Loan Reserve(s) will be returned to the Borrower(s) subject to the Early Repayment Terms outlined herein.

11.1 MONTHLY PAYMENT RESERVE:

The Borrower(s) will assign $884,625.00 to the Lender from the Loan proceeds representing a Monthly Payment Reserve which, upon the occurrence of an event of default of the Loan, the Borrower(s) agrees to and so directs the Lender to withdraw from the Monthly Payment Reserve payments to maintain monthly Loan interest and Loan Servicing Fee payments, to pay for any costs to enforce the terms of the Loan, including legal, and/or receivership costs, and/or for any costs to realize on the Loan Security, at the Lender's sole discretion.

Such payments shall be of the same force and effect as if made personally by the Borrower(s), however, shall not constitute a cure or waiver of a default by virtue of the failure to comply with any other payment terms herein. The Lender shall not pay interest on the interest reserve or any monies held or advanced as further security for the Loan.

12. **SPECIAL TERMS AND CONDITIONS:**

The Lender will require the following SPECIAL TERMS AND CONDITIONS, all of which must be found satisfactory to the Lender and its Solicitor:

a) Approval of the proposed form of Order and Court approval in CCAA Proceeding No. S-205095 approving the transfer and assignment of the Existing Loans and the Existing Security, on or before June 8, 2021.

b) DIP Financing to be fully paid out and a Court Order terminating the DIP Financing.

c) Review of monitor's budget through the term of the Loan.

d) Administration charge to be fully paid as of the funding date and removed and replaced by the funding of the security to the Monitor or alternatively the Administration charge limited to an amount satisfactory to the Lender.

e) Provision of a Payment Reserve to CCAA Monitor (with a current estimate of $250,000, but subject to change), of which $100,000 is to be advanced to the Monitor on closing, to cover anticipated future costs of the Monitor and its counsel in the CCAA Proceedings.

f) Consent of Aviva Insurance Company of Canada to the transfer and assignment of the Existing Loan and Existing Security to the Lender and agreement to not seek a reverse vesting order or challenge the interest of the participants in the new ownership of the Existing Security or otherwise to seek to modify the registration of the Existing Loans and the Existing Security as a first-ranking charge registered on title to the Secured Property.

g) Court approval referred to in 12.a), above, to include the following provisions:

- Carve out of the Existing Loans and the Existing Security from the stay of proceedings in connection with CCAA Proceeding No. S-205095.
- Stays of proceedings to be extended to the term of the Loan.
- No further DIP financing without consent of the Lender;
- CCAA Monitor's powers to be reduced to allow Borrower(s) to complete the Project;
- CCAA to go into "dormant status" for the term of the Loan, meaning that no further steps are to be taken in the CCAA Proceeding during the stays of proceedings without the consent of the Lender

13. **PERMISSIBLE PRIOR ENCUMBRANCES:**

The Lender will permit the following prior charge(s) to be registered against the Secured Property:

The Administration charge, if not removed and replaced by reserve funding, subject to limitation to the satisfaction of the Lender as contemplated by Section 12(d) hereof.

14. **PERMISSIBLE SUBSEQUENT ENCUMBRANCES:**

The Lender will permit the following subsequent-ranking financial charge(s) to be registered against title to the Secured Property:

Those charges registered against Land Title No. CA7287055 set out in Schedule "D".

15. **LOAN SECURITY:**

The Lender will require the following Loan Security and other or further Loan Security (the "Loan Security"), all of which must be found satisfactory to the Lender and its Solicitor:

a) An assignment of the Existing Loans and Existing Security to the Lender.

b) Assignment of a $884,625 Monthly Payment Reserve to the Lender.

c) Assignment of a $60,000 CCAA Reporting Consultant allowance to the Lender.

d) Assignment of the Lender-approved Payment Reserve to the Monitor of the CCAA proceeding.

e) To the extent not included in the Existing Security:

   i. General Security Agreement with respect to the Borrower(s) and Covenantor(s) under the P.P.S.A.
   ii. Personal and/or corporate covenants as required by the Lender.
   iii. Principals of the Borrowing Company and any Corporate Covenantor(s) to postpone any Shareholder Loans to the Lender.
   iv. Property insurance, acceptable to the Lender.
   v. Title insurance in favour of the Lender including the Extended Super Priority Lien Coverage under the Lender's Master Policy with First Canadian Title.
   vi. Hazardous substances and environmental indemnity agreement by the Borrower(s)/Covenantor(s) in favour of the Lender

f) Court approval of the security and the transaction including a declaration the Lender has a first charge on the assets.

g) Such other and further Loan security in connection with the Secured Property as may be required by the Lender or its solicitor.

16. **STANDARD CLAUSES:**

Standard terms, conditions, covenants, representations and warranties are attached to and form part of this Commitment Letter as outlined in Schedule "A".

17. **CONDITIONS PRECEDENT TO FUNDING:**

17.8 Funding of the Loan is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Wednesday, June 16, 2021**, all to be found satisfactory to the Lender and its solicitor:

a) An executed copy of this Commitment Letter.

b) Payment of the Non-Refundable Working Fee of $25,000.00 payable to "Domain Funding" by way of bank draft upon your acceptance of this Term Sheet. **SATISFIED**

c) Review and approval of the executed assignment and transfer agreement with respect to the purchase and assignment of the Existing Loans and the Existing Security, and all supporting documents including the commitment letter issued by CMLS Financial Ltd. as amended and its replacement by this Commitment Letter. **PENDING**

d) Verification of minimum of $9,325,000 of funds required to be contributed by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd. to complete the refinance of the Existing Lenders and purchase and assignment of the Existing Loans and the Existing Security. **PENDING**

e) Satisfactory review of and opinion with respect to the following by the Lender' solicitor:

i. Mortgage CA7337616 registered i/n/o CMLS Financial Ltd.
ii. Assignment of rents CA7337617 registered i/n/o CMLS Financial Ltd.
iii. Mortgage CA8277031 registered i/n/o Desjardins Financial Security Life Assurance Co.

PENDING

f) Satisfactory review of and opinion with respect to the following by the Lender' solicitor:

i. Commitment Letter, issued by CMLS Financial Ltd. dated July 4, 2018 and all amendments, including, without limitation,
- Amendment to Commitment Letter, issued by CMLS Financial Ltd. dated December 12, 2018, and
- Amendment to Commitment Letter, issued by CMLS Financial Ltd. dated February 1, 2019, and
- Amendment to Commitment Letter, issued by CMLS Financial Ltd. dated June 25, 2019,

and its replacement by this Commitment Letter on funding.

SATISFIED

g) Satisfactory inspection of the Secured Property by the Lender. **SATISFIED**

h) Satisfactory review by the Lender of the Certificate of Title for the Secured Property. **SATISFIED**

i) Satisfactory review by the Lender of the Organizational Chart of the Borrowers and any company providing a corporate covenant. **SATISFIED**

j) Satisfactory review by the Lender of the most recent Financial Statements for the Borrowing Company(s) and any company providing a corporate covenant (unless newly formed), prepared by a qualified accounting firm. **SATISFIED**

k) Confirmation of legal and beneficial ownership of the Secured Property, the Borrowing Company, and any company providing a corporate covenant including copies of any trust, joint venture, and/or limited partnership agreement(s). **SATISFIED**

l) Current, signed and dated Personal Net Worth Statement of any personal Borrower(s) or person(s) providing a covenant including details of all assets and liabilities. The PNW Statement should be prepared on Domain Funding forms with explanatory notes and/or attachments where necessary. **SATISFIED**

m) Credit Bureau Report for any personal Borrower(s) or person(s) providing a covenant. **SATISFIED**

n) Detailed real estate development resume of the Borrower(s)/Covenantor(s). **SATISFIED**

o) Satisfactory review by the Lender of Development and Building Permits issued by the City of Vancouver related to the Project. **SATISFIED**

p) A complete set of current architectural drawings (11" x 17") of the Project (Issued for Construction). **SATISFIED**

q) Geotechnical Report, acceptable to the Lender, confirming the Secured Property contains satisfactory soil conditions to permit development of the Secured Property. **SATISFIED**

r) Transmittal Letter(s), acceptable to the Lender, from the Geotechnical Engineer authorizing the use of their report for mortgage financing purposes. **SATISFIED**

s) Environmental Report(s), acceptable to the Lender, demonstrating that the Secured Property is environmentally clean. **SATISFIED**

t) Transmittal Letter(s), acceptable to the Lender, from the Environmental Consultant authorizing the use of their report for mortgage financing purposes. **SATISFIED**

u) Appraisal Report and Transmittal Letter from RYAN ULC demonstrating $26,000,000 minimum "as is" land value for the Secured Property. **SATISFIED**

v) Transmittal Letter(s), acceptable to the Lender, from RYAN ULC authorizing the use of their Appraisal Report for mortgage financing purposes. **PENDING**

w) Satisfaction of the SPECIAL TERMS AND CONDITIONS outlined in Section 12., herein. **PENDING**

x) Such other and further information, material or requirements that may be required by Domain Funding, the Lender or the Lender's solicitor.

17.9 Funding of the Loan is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Wednesday, June 23, 2021**, all to be found satisfactory to the Lender and its solicitor:

a) Receipt of insurance policies, including confirmation of paid insurance premiums, satisfactory to the Lender and/or its solicitor.

b) Registered Loan Security satisfactory to Lender's solicitor.

c) Such other and further information, material or requirements that may be required by Domain Funding, the Lender or the Lender's solicitor.

17.10 Domain Securities Corp., a related-party to Domain Funding, has advised Domain Funding that it has approved the Loan as a qualified mortgage investment for its private mortgage investors and that its investors will provide the monies necessary to fund the Loan on the Loan Funding Date. As a result, the fund-raising requirement of this 2RCL has been **SATISFIED.**

17.11 Upon satisfaction of all Conditions Precedent to Funding, as determined by the Lender and its solicitor at their sole discretion, the entire Loan Amount will be advanced to the Borrower(s) in one advance in accordance with the terms and conditions of this Commitment Letter.

18. POST FUNDING CONDITIONS:

None.

19. PAYMENT OF LOAN FEES:

Pursuant to Schedule "A" of the Loan Retainer Agreement dated Thursday, April 29, 2021, the $25,000 Non-Refundable Working Fee has been received.

The following further amounts are due as follows:

$ 80,000.00	Initial MORTGAGE BROKER FEE due upon issuance of the Loan Commitment Letter dated May 7, 2021. **RECEIVED**
$ 65,000.00	Second MORTGAGE BROKER FEE due upon issuance of the Revised Loan Commitment Letter dated May 11, 2021. **RECEIVED**
$147,000.00	Fund Raising Fee payable to Domain Securities Corp. due upon the issuance of the Second Revised Loan Commitment Letter dated June 4, 2021.
$149,000.00	Third MORTGAGE BROKER FEE due upon the earlier of: (a) the funding of the Loan; or (b) the Loan Funding Date specified in the 2RCL; or (c) the cancellation of the Loan Commitment Letter(s) by the Borrower(s). The $149,000.00 Third MORTGAGE

BROKER FEE will be further evidenced and secured by a Promissory Note to be issued and executed by the Borrower(s) and Covenantor(s) along with the Loan Commitment Letter(s).

20. LOAN SERVICING AND ADMINISTRATIVE FEES:

The Borrower(s) and Covenantor(s) agree to pay the following Loan Servicing and Administrative Fees during the Loan term:

a) Loan Servicing Fee of 0.25% per annum, calculated and paid monthly. The Loan Servicing Fee is payable by the Borrower to the Lender as the administrator of the Loan, as compensation for collecting and making interest payments, Loan record-keeping, and post funding administration of the Loan in the normal course;

b) $500.00 non-sufficient funds (NSF) fee, per occurrence.

c) $500.00 late payment fee, per occurrence.

d) $500.00 discharge fee, per title to be discharged.

e) $500.00 per hour (or portion thereof) administration fee for each occasion Domain Funding or the Lender provides administrative services outside the normal course administration of the Loan.

21. LENDER'S SOLICITOR:

Legal work and documentation will be performed, at the Borrower(s)' expense, by the Lender's solicitor, as follows:

Name:	Alan Frydenlund
Firm:	Owen Bird
Address:	Bentall 3, Suite 2900, 595 Burrard Street, Vancouver, BC V7X 1J5
Telephone:	(604) 691-7511
Email:	afrydenlund@owenbird.com

22. BORROWER(S)' INFORMATION:

The Borrower(s) must complete the information required in Schedule "C" attached to this Commitment Letter upon acceptance of this Commitment Letter.

23. DEDUCTIONS FROM LOAN PROCEEDS BY LENDER'S SOLICITOR:

The Borrower(s) and Covenantor(s) acknowledge and agree that the Lender's solicitor will be deducting the following amounts from the Loan Proceeds:

Interest Adjustment:	Lender's solicitor to advise.
Balance of Mortgage Broker Fee:	$149,000.00 (payable to Domain Funding)
Fund Raising Fee:	$147,000.00 (payable to Domain Securities Corp.)
Monthly Payment Reserve:	$884,625.00 (payable to Domain Mortgage Corp.)
Provision of a Payment Reserve for the CCAA Monitor:	$250,000.00 (payee to be named)
Lender's CCAA Reporting Consultant:	$60,000.00 (payee to be named)
Lender's Legal Fees:	$40,000.00 (estimate)

NOTE: Payouts of existing mortgages, outstanding taxes, utilities, etc. are to be deducted from mortgage proceeds and paid by the Borrower(s)' solicitor and/or paid by the Borrower(s)' solicitor subject to the appropriate undertakings.

24. LOAN FUNDING EXPIRY DATE:

Unless the Loan is funded by the Lender and funds are drawn by the Borrower(s) in accordance with the terms and conditions of this Commitment Letter on or before **Wednesday, June 30, 2021**, then, the Lender's obligation to fund the Loan will become null and void.

25. ACCEPTANCE:

The Borrower(s) and Covenantor(s) must indicate their acceptance of this Commitment Letter by completing, signing and initialing where indicated, and by completing, signing, and initialing Schedule "A", Schedule "B", Schedule "C", and Schedule "D" attached, and returning to Domain Funding along with the $147,000.00 Fund Raising Fee payable to Domain Securities Corp. on or before 5:00 P.M. on Friday, June 4, 2021.

The $80,000 Initial Mortgage Broker Fee has been previously received in connection with the Commitment Letter dated Friday, May 7, 2021.

The $65,000 Second Mortgage Broker Fee has been previously received in connection with the Commitment Letter dated Tuesday, May 11, 2021.

If this Commitment Letter is not accepted by the Borrower(s) and Covenantor(s) or if the $147,000.00 Fund Raising Fee payable to Domain Securities Corp. by 5:00 P.M. on Friday, June 4, 2021, then the Lender's obligation to fund the Loan will cease.

Yours truly,

DOMAIN Funding

PER: Authorized Signatory

ACCEPTANCE OF COMMITMENT LETTER

I/We hereby understand and accept the terms and conditions of this Commitment Letter and the attached Schedules.

Accepted this 4th day of June, 2021

BORROWER(S):	COVENANTOR(S):
Evergreen House Development Limited Partnership	**Port Capital Development Inc.**
PER: Authorized Signatory	PER: Authorized Signatory
Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership	**Mr. Macario Teodoro Reyes**
PER: Authorized Signatory	**Mr. Macario Teodoro Reyes**

SCHEDULE "A" – STANDARD CLAUSES

(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JUNE 4, 2021)

1. PROPERTY TAXES AND OTHER CHARGES:

The Borrower(s) will pay all taxes, assessments, utilities, strata and/or condominium fees and all other amounts charged or levied against the Secured Property when the same are due and payable, and provide evidence to the Lender on an annual basis by no later than August 31 of each year, that they are fully paid and up to date.

Subject to the discretion of the Lender, any advance under the Loan will be conditional on the Borrower(s) providing evidence to the Lender that all taxes, assessments, utilities, strata and/or condominium fees and all other amounts charged or levied against the Secured Property have been paid in full.

2. INSURANCE:

The Borrower(s) will insure and keep insured the Secured Property and all chattel property against the following perils:

a) With respect to all buildings and other improvements, if any, now or hereinafter situated on the Secured Property, and all insurable property included within the buildings, coverage against loss or damage by fire and other insurable hazards, including earthquakes, defined in an "all risks" policy for the full replacement cost with provision for permission to occupy and with automatic vacancy permit.

b) If applicable, during construction for the full contract price plus extras and additions which, from time to time, may be added thereto using standard Builders' Risk - "all risk" form or equivalent. The policy is to grant permission for partial occupancy.

c) If applicable, standard comprehensive boiler and pressure vessel insurance for the full replacement cost of the Secured Property and all improvements thereon or such lesser amount as shall be acceptable to the Lender.

d) If applicable, business interruption insurance or rental loss insurance acceptable to the Lender for an indemnity period of not less than 100% of the resulting loss of rent and/or other revenue received from the operation of the building.

e) Loss or damage of all personal property by fire or other insurable hazards, including theft, in an amount not less than the full replacement cost thereof.

f) Public liability insurance to an amount not less than $2,000,000 on an occurrence basis.

The policies of insurance to be maintained shall not contain any co-insurance clauses and shall be in a form and with insurers satisfactory to the Lender, and/or its insurance consultant, and shall include the agreement of the insurer that the policy will not be cancelled without at least 15 days prior written notice of intended cancellation to the Lender. The Lender shall be named in all policies as "Loss Payee" and/or as "Additional Insured", as its interest may appear, and the Borrower shall provide to the Lender an updated Certificate of Insurance upon renewal, and in any event,15 days prior to the expiration of any insurance policy for the Secured Property.

The Lender reserves the right to engage the services of an insurance consultant, at the Borrower(s)' expense, to verify the adequacy of the policies of insurance.

3. DOCUMENTATION AND SOLICITOR'S APPROVAL:

Loan documentation will be drawn by the Lender's solicitor using the Lender's specified forms. The full Loan amount will be advanced to the Borrower(s) only when the title to and all security in connection with the Loan and all other documents and matters with respect to the Loan being necessary or advisable to the Lender's solicitors are complete, satisfactory and acceptable to the Lender's solicitors.

4. COSTS:

The Borrower(s) and Covenantor(s) shall pay, whether or not all or any part of the Loan is advanced, all legal costs, registration fees, appraisal fees, consulting fees and all out-of-pocket expenses incurred by the Lender relating to the Loan in preparation for and completion of the transaction contemplated by this Commitment Letter. Such costs, fees and expenses may be deducted out of the Loan funds to be disbursed, and this Commitment Letter shall constitute an irrevocable direction by the Borrower(s) and Covenantor(s) in that regard.

Upon the Borrower(s)' repayment of the Loan in full, including all interest and other charges owing thereon, the Lender shall provide the Borrower with a discharge of the Loan security registered against the Borrower(s), Covenantor(s) and Secured Property (to be prepared and delivered to the Lender by the Borrower(s) or its solicitor at its own cost) upon payment to the Lender of the discharge fee outlined herein (where permissible by provincial law).

5. TITLE:

The Borrower(s) are, or shall become, the registered and beneficial freehold interest owner of the Secured Property at the time of the disbursement of any part of the Loan. The Borrower(s) will have, as the registered owner of the Secured Property, a good and marketable title in fee simple to the Secured Property, and the Lender will be in priority over all other encumbrances, leases, agreements for leases, restrictions, agreements, liens, assignments, easements, mortgages and charges whatsoever to the extent of the Loan except for such encumbrances to which the Lender may consent to in writing.

The Secured Property and all improvements thereon shall have been duly authorized and comply in all respects with all applicable laws, bylaws, government requirements, whether federal, provincial, or municipal, including without restriction, those dealing with zoning, use, occupancy, liquor license, subdivision, parking, historical designations, fire access, loading facilities, landscaped areas, pollution of the environment, toxic materials or other environmental hazards, building construction, public health and safety, and there shall be no outstanding work orders, judicial or administrative actions, suits, or proceedings pending or threatened against the Secured Property or the improvements or any part thereof.

6. REPRESENTATIONS AND WARRANTIES OF DOMAIN FUNDING:

The Borrower(s) and Covenantor(s) acknowledge that Domain Funding has made no verbal or written representations or warranties related to the Loan, the Secured Property, or the ability to provide future financing of the Secured Property after the Loan Funding Date, except as expressly outlined in this Commitment Letter.

7. REPRESENTATIONS AND WARRANTIES OF BORROWER(S) AND COVENANTOR(S):

The Borrower(s) and Covenantor(s) represent and warrant the following to Domain Funding and the Lender:

a) The Borrower(s) are, or shall become, the registered and beneficial freehold interest owner of the Secured Property at the time of the disbursement of any part of the Loan.
b) The Borrower(s) is the legal and beneficial owner of all the right, title and interest to the Secured Property and holds no portion of the legal or beneficial interest in the Secured Property in trust for any party(s).
c) All other mortgage loans to the Borrower(s) with any lender have not been in arrears in the last 12 months, except as disclosed to and approved by Domain Funding.
d) All financial statements and other documents and information delivered by the Borrower(s) and Covenantor(s) in connection with the Borrower(s)' application for the Loan are true, complete and accurate and representative of the financial condition of the Borrower(s) and Covenantor(s).
e) Neither the Borrower(s) nor the Covenantor(s) are in default under any agreement or instruments to which any of them are a party that materially affects any of their businesses, property, assets or financial condition.
f) At the time of disbursement of any part of the Loan, no default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default under any of the Loan Security documents, and neither the Borrower(s) nor the Covenantor(s) shall be deceased, insolvent or be subject to any bankruptcy, arrangement with creditors, proposal, amalgamation, outstanding claims, actions, suits, judgments, investigations, reorganization, liquidation, winding up, dissolution, receivership or material litigation or continuation under laws of any jurisdiction, nor, to the best of the knowledge of the Borrower(s) or Covenantor(s) are there any pending or threatened. Any default herein shall be deemed to be a default under the Loan. Any default under the Loan shall be deemed to be a default hereunder.
g) The purpose of the Loan is primarily for business, investment or commercial purposes and is not primarily for personal, family or household purposes. The Borrower(s) will only use the Loan proceeds for the Loan purposes set out in the "Uses and Sources of Funds" section of this Commitment Letter.
h) Once executed by the Borrower(s) and Covenantor(s), this Commitment Letter and all other Loan security documentation will each be a valid and binding obligation of each of the Borrower(s) and Covenantor(s) in accordance with their terms.
i) All remittances required to be made by the Borrower(s) or Covenantor(s) to federal, provincial and municipal governments have been made, are currently up to date and not in arrears.
j) The Borrower(s) and/or Covenantor(s) have the ability to service the Loan debt.

The Borrower(s) and Covenantor(s) agree that the above representations and warranties will be true and correct as of the execution of this Commitment Letter and at the time of disbursement of any part of the Loan, and any extension or renewal of the Loan, and will survive the completion of the Loan and any extension or renewal thereof.

The Borrower(s) and Covenantor(s) represent and warrant that all financial and other information provided in connection with the Borrower(s)' Application to Finance the Secured Property is true, accurate and complete, and acknowledges that the terms and conditions contained in this Commitment Letter are based on reliance by Domain Funding and the Lender on the truth, accuracy and completeness of the information provided and the above representations.

8. COVENANTS OF BORROWER(S) AND COVENANTOR(S):

The Borrower(s) and Covenantor(s) hereby covenant to:

a) Comply with all Loan terms outlined in this Commitment Letter.
b) Keep all prior and subsequent mortgages registered against the Secured Property, as permitted by the Lender, current and in good status while the Loan remains outstanding.
c) If applicable, comply with all provisions of the Builders Lien Act (or equivalent provincial statute where the Secured Property is located).
d) If applicable, supply to the Lender a statutory declaration in conjunction with each advance under the Loan, confirming the status of any holdback account(s) as at the date of the statutory declaration.
e) Promptly deliver to the Lender the information and documentation required hereunder and such further information and documentation, such as financial reports, as is requested by the Lender or its solicitor, concerning the Borrower(s), Covenantor(s), the Secured Property, or the Project (if applicable), and to advise the Lender immediately upon a material adverse change or the discovery of a discrepancy or inaccuracy in or to the information and documentation provided to the Lender in connection with the Loan.
f) Take all appropriate remedial action in the event of a violation of any environmental law, release of hazardous substances on the Secured Property or any other contamination of the Secured Property.
g) Not further encumber the Secured Property without the written consent of the Lender.
h) Comply with provincial securities acts and mortgage broker acts, where applicable.
i) Remain in good standing with the Canada Revenue Agency (CRA) with respect to tax filings and remittances.
j) Neither the Borrower(s) nor their employees, officers, directors, or agents will represent that financing is available from Domain Funding or Domain Mortgage Corp. to any contractors, trades, or suppliers performing work on the Secured Property.

9. PUBLISHING, MARKETING AND SIGNAGE:

The Borrower(s) and Covenantor(s) agree to allow Domain Funding to photograph or utilize existing photographs of the Secured Property and to publish such photographs along with details of the Loan in internal and/or external marketing programs.

The Borrower(s) and Covenantor(s) also agree to allow Domain Funding the right to install on the Secured Property, at Domain Funding's expense, up to four "Domain Funding" financing signs, the location(s) of which shall be mutually agreed to by the parties.

10. CONFIDENTIALITY AND DISCLOSURE:

The Borrower(s) and Covenantor(s) acknowledge and agree that the terms and conditions of this Commitment Letter are confidential between the Borrower(s), the Covenantor(s), Domain Funding and the Lender. The Borrower(s) and Covenantor(s) agree not to disclose the information contained herein to any third party without the written consent of the Lender.

The Borrower(s) and Covenantor(s) also acknowledge and agree that the Lender may, at its sole discretion, syndicate the Loan, including to affiliates or associates of the Lender as co-lenders or the sole lender of the Loan, and may disclose to co-lenders, investors and their share or unit holders, as applicable, any or all information provided to the Lender by the Borrower(s) and Covenantor(s), including but not limited to corporate and personal financial information..

11. CONSENT TO COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION:

The Borrower(s) and Covenantor(s) hereby authorize Domain Funding and/or the Lender to obtain information from any credit reporting agency or credit granting organization as required at any time and consents to the disclosure of such information at any time to any credit reporting agency or credit granting organization.

In addition, without limiting the foregoing, the Borrower(s) and Covenantor(s), if an individual, hereby acknowledge that they have read and understood Domain Funding's current privacy policy, including specifically the provisions respecting the collection, use and disclosure of personal information, and hereby consents to the collection, use and disclosure of their personal information by Domain Funding and/or the Lender in accordance with Domain Funding's current privacy policy, as described on Domain Funding's company website: www.domainfunding.ca.

12. ASSIGNMENT:

The Loan may be assigned by the Lender at which time the Lender shall be relieved by the Borrower(s) and Covenantor(s) of all liabilities and claims relating to the Loan hereunder. The Loan is neither assignable nor transferable by the Borrower(s) or Covenantor(s) without the written approval of the Lender. In addition, the Lender may appoint or engage another party to service and administer the Loan, including collection of payments under the Loan and the approval of Conditions Precedent to Funding the Loan, without prior notice to or consent of the Borrower(s) and/or Covenantor(s).

13. ADVERSE CHANGE:

It is a term and condition of the granting, approval and continuation of the Loan, both before and after the disbursement of funds, that, in the Lender's sole opinion, an adverse change relating to the Borrower(s), the Covenantor(s), the Project (if applicable), the Secured Property, the Loan Security or the risk associated with the Loan shall not have occurred, including that there are no actions, suits or pending proceedings involving the Borrower(s) or any Covenantor(s). In the event of an adverse change, the Lender may, in its sole discretion, declare or treat it as an event of default under the Loan, may cease or delay further funding, may terminate this Commitment Letter and may exercise any and all remedies available to it under this Commitment Letter and the Lender's Loan Security or at law or in equity.

14. COUNTERPARTS AND FACSIMILE/E-MAIL EXECUTION:

This Commitment Letter may be executed in one or more counterparts, each of which when so executed will constitute an original, and all of which will constitute one and the same Commitment Letter. Also, this Commitment Letter may be executed by the parties and transmitted by facsimile or by e-mail (with PDF attachment), and if so executed and transmitted this Commitment Letter shall be for all purposes as effective as if the parties had delivered an executed original copy of this Commitment Letter.

15. SEVERABILITY:

Each of the provisions in this Commitment Letter is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision of this Commitment Letter. To the extent permitted by applicable law, the parties waive any provision of law that renders any provision of this Commitment Letter invalid or unenforceable in any respect.

16. GOVERNING LAWS:

The agreement constituted by the Borrower(s)' and Covenantor(s)' acceptance of this Commitment Letter shall be governed by the laws of the province of British Columbia.

17. BORROWER'S SOLICITOR:

The Lender shall have the right to approve the solicitor(s) for the Borrower(s) and the Lender may, in its sole discretion, require the Borrower to change its solicitors at any time.

18. DISCHARGE OF LOAN SECURITY:

Prior to the discharge of the Lender's mortgage security, the Borrower(s)/Covenantor(s) must provide the Lender, at the Lender's request, a CRA Clearance Certificate, satisfactory to the Lender, indicating that the Borrower(s)/Covenantor(s) are in good standing with the CRA with respect to tax filings and remittances and that no funds are owing to the CRA.

19. SURVIVAL:

The obligation and promise of the Borrower(s) and Covenantor(s) to pay the Loan Fee(s), interest on the Loan amount at the interest rate from the time the Loan amount was available for advance, up to and including the date the Loan is repaid or no longer available, including minimum interest, legal fees and disbursements, shall survive the lapse, termination or cancellation of this Commitment Letter.

The terms and conditions of this Commitment Letter shall, after acceptance by the Borrower(s) and Covenantor(s), survive the execution and registration of all security documentation and there shall be no merger of these provisions or conditions in the security provided that in the case of a conflict between the provisions hereof and of any of the security documents, the Lender shall be entitled to elect which provisions shall prevail.

20. TIME SHALL BE OF THE ESSENCE:

It is understood that, with reference to all terms and conditions of this Commitment Letter, time shall be of the essence.

SCHEDULE "B" – PROMISSORY NOTE

(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JUNE 4, 2021)

Date of Promissory Note:	**June 4, 2021**
Principal Sum of Promissory Note:	**$149,000.00**
Interest Commencement Date of Promissory Note:	**June 30, 2021**
Maturity Date of Promissory Note:	**July 1, 2021**

FOR VALUE RECEIVED including TEN DOLLARS (the receipt and sufficiency of which is hereby acknowledged by the parties signing this Promissory Note) and other good and valuable consideration, we promise to pay on demand to Bankers Mortgage Corporation d/b/a Domain Funding at its office located at #1100 – 1040 West Georgia Street, Vancouver, British Columbia, the sum of ONE HUNDRED FORTY-NINE THOUSAND DOLLARS (hereinafter called the "Principal Sum") with interest thereon at the rate of 18.00% per annum, calculated monthly as well after as before maturity, default and judgment with overdue interest at the same rate as on the Principal Sum, on the maturity date of this Promissory Note.

We agree that, as security for payment of the PROMISSORY NOTE, we hereby mortgage and charge our right, title and interest in the real property located at:

Civic Address:	1250 West Hastings Street, Vancouver B.C. V6E 4H1
Legal Description:	Lot 18, Block 29, Plan VAP92, District Lot 185, New Westminster Land District, Exc That Pt of Canadian Pacific Railway Srw as Described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154c, & Exc S 7 Ft Now Rd
PIDs:	006-721-397

as and by way of an equitable mortgage, in favour of Bankers Mortgage Corporation d/b/a Domain Funding. The equitable mortgage created hereby shall remain in effect until the PROMISSORY NOTE is paid in full.

The undersigned hereby jointly and severally waive demand or presentment for payment, notice of dishonor, protest and notice of protest, and hereby agree to pay, upon the default of any payment hereof, all expenses related or incidental to the PROMISSORY NOTE including all costs for enforcement on a true indemnity, solicitor and own client costs basis.

Signed, sealed and delivered this 4th **day of** June **, 2021.**

BORROWER(S):	**COVENANTOR(S):**
Evergreen House Development Limited Partnership	**Port Capital Development Inc.**
PER: Authorized Signatory	PER: Authorized Signatory
Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership	**Mr. Macario Teodoro Reyes**
PER: Authorized Signatory	**Mr. Macario Teodoro Reyes**

SCHEDULE "C" – BORROWER(S)' INFORMATION

(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JUNE 4, 2021)

1. **BORROWER(S):**

Name: Evergreen House Development LP

Registered Records Office: 325 West 4th Ave.
Vancouver, BC V5Y 1H3

Telephone: (604) 805-0282

Fax:

E-Mail: tobi@portliving.com

2. **BORROWER(S)' SOLICITOR:**

Name: Robert Quon

Address: 20/F 250 Howe St.
Vancouver, BC

Telephone: (604) 622-5151

Fax:

E-Mail: robert.quon @ dentons

3. **BORROWER(S)' INSURANCE AGENT:**

Name: Chris McLean

Address: 1200 - 401 West Georgia St

Telephone: (604) 443-2492

Fax: (604) 682-4026

E-Mail: chris.mclean@aon.ca

SCHEDULE "D" – PERMISSIBLE SUBSEQUENT ENCUMBRANCES

Copy of Title No. CA7287055

June 4, 2021

This is Exhibit " B " referred to in the affidavit of ..Macario....Reyes...... sworn before me at ..Vancouver...BC this ..4. day of ..June...,..2021......

....
A Commissioner for taking Affidavits for British Columbia

Port Capital Development Inc.
328 West 2nd Avenue
Vancouver, BC
V5Y 1C8

1296371 B.C. Ltd.
328 West 2nd Avenue
Vancouver, BC
V5Y 1C8

Attention: Mr. Tobi Reyes

Dear Mr. Reyes,

Re:	**Deposit Protection Contract Facility ("DPI Facility")**
For:	**Evergreen House Development Limited Partnership by its general partner Port Capital Development (EV) Inc.**
Project:	**A 20-unit, nineteen-storey concrete & timber residential condominium building above an underground parkade, located at 1250 Hastings Street, Vancouver, BC, and known as Terrace House (Hereinafter referred to as the "Project")**

We make reference to the commitment letter dated October 17th, 2017 between, among others, Aviva Insurance Company of Canada ("**Aviva**") and Evergreen House Development Limited Partnership (the "**Principal**") by its general partner Port Capital Development (EV) Inc. (the "**General Partner**"), as amended from time to time (the "**Commitment Letter**").

The Principal has asked for Aviva's support of the offer made by 1296371 B.C. Ltd. ("**Junior Lender**") to redeem and/or take an assignment of the mortgages and other security interests held by Desjardins Financial Security Life Assurance Company and CMLS Financial Ltd., and to seek an extension of the *Companies' Creditors Arrangement Act*, No. VLC-S-S205095 proceedings (the "**CCAA Proceedings**").

Aviva is prepared to provide its support for the Offer (the "**Aviva Support**") on the basis of the conditions and covenants set forth in this letter agreement.

1. Each of the Principal, and Port Capital Development Inc. and Macario (Tobi) C. Reyes (together, the "**Indemnitors**") hereby acknowledges that no further deposits for the Project shall be insured under the DPI Facility unless approved by Aviva, in its sole discretion.

2. The Aviva Support is subject to the following conditions precedent being satisfied:

   a. Aviva, Junior Lender, Domain Mortgage Corp. ("**Domain**") and 1260780 B.C. Ltd. ("**1260780**") entered into an intercreditor agreement which will set out the following priorities for the mortgages and other security over the Project:

      i. Domain to rank first up to a maximum of $14,700,000;
      ii. Junior Lender (as to 65%) and Aviva (as to 35%) on a pari passu basis (as to their noted proportionate share) to rank second up to a maximum of $8,005,201 in the aggregate;
      iii. Aviva to rank third for the entirety of its claim;
      iv. 1260780 to rank fourth to a maximum of $2,150,000; and
      v. Junior Lender to rank fifth for the balance of its claim.

      (the "**Priorities**")

   b. The draft order to be submitted by the Junior Lender to the B.C Supreme Court under the CCAA Proceedings sets out the Priorities.

3. The Principal hereby covenants not to exit from the CCAA Proceedings or file any Plan of Arrangement or otherwise seek court sanction of any restructuring or similar unless and until:

   a. The Principal has paid to either Aviva or Aviva's lawyers in trust the sum of $500,000 (the "**Initial Reserve Monies**"). Aviva is hereby authorized to use the Initial Reserve Monies from time to time to pay (or reimburse Aviva for) any then existing or future claims made under insured deposits, and Aviva's premiums and expenses relating to the DPI Facility and the CCAA Proceedings, including Aviva's legal fees;
   b. The Principal has obtained and delivered to Aviva confirmations from each of the existing pre-sale purchasers insured by Aviva that the presale contracts remain in full force and effect, or deposited with Aviva or Aviva's lawyers in trust cash collateral in the sum of any potential claims that may be made under insured deposits (the "**Cash Collateral**"); and
   c. The Principal has obtained and delivered to Aviva re-affirmations from Luz Consuelo C. Reyes as to Units 302 and 303, and Paula Thomson as to Unit 301 and other pre-sale purchases in respect of the acknowledgements or releases previously signed and delivered by each of them to Aviva.

4. The Principal, Indemnitors and Junior Lender hereby acknowledge that Aviva's written consent, acting reasonably so long as the Principal and Indemnitors have complied with the terms of this letter agreement otherwise in Aviva's sole discretion, will be required for any future construction financing for the Project (the "**Construction Financing**"). Unless waived by Aviva in its sole discretion upon its review of the terms of the Construction Financing, at minimum, proceeds of the Construction Loan shall pay to Aviva or its lawyers in trust the sum of $2,800,000 (the "**Additional Reserve Monies**") less any Cash Collateral previously paid to Aviva. Aviva is authorized to use the

Additional Reserve Monies from time to time to pay (or reimburse Aviva for) any then existing or future claims made under insured deposits, and Aviva's premiums and expenses relating the DPI Facility and the CCAA Proceedings, including Aviva's legal fees

5. Each of the Principal and Indemnitors agree to deliver no later than June 4, 2021 updated personal net worth statement for Mr. Macario (Tobi) C. Reyes.

6. The Principal shall deliver copies to Aviva of any financial statements for Port Capital Developments Inc that it delivers to Domain or any future lender providing construction financing.

7. Each of the Principal and Indemnitors hereby acknowledges and agrees that each of the following agreements (collectively, the "**Existing Security**") remains in full force and effect and continues to be valid and binding upon and enforceable against the Principal and Indemnitors party thereto in accordance with its terms:

    a. Indemnity agreement in favour of Aviva dated October 13, 2017 executed by the Principal and the Indemnitors;
    b. $32,000,000 Form B mortgage and assignment of rents granted by the General Partner in favour of Aviva charging the lands and premises located at 1250 West Hastings Street, Vancouver, B.C. and legally described as PID: 006-721-397, Lot 18 Except that part of Canadian Pacific Railway Right of Way as described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, & Except the South 7 Feet Now Road, Block 29 District Lot 185 Plan 92;
    c. Equitable mortgage and estoppel agreement dated October 24, 2017, executed by the General Partner and the Principal in favour of Aviva;
    d. Developer agreement dated October 24, 2017 executed by the Principal and the General Partner in favour of Aviva; and
    e. Location specific security agreement dated October 24, 2017 executed by the Principal and the General Partner in favour of Aviva,

    notwithstanding the CCAA Proceedings or any steps or actions that have occurred or will occur under such proceedings.

8. Each of the Principal and Indemnitors acknowledges and agrees that:

    a. the Aviva Support is expressly limited to the Offer, as described herein, and that the foregoing support shall not obligate or be construed to require Aviva to grant any consents, modifications, or waivers of any provision of the Commitment Letter or the Existing Security. Except as explicitly set forth herein, all other terms and conditions of the Commitment Letter shall remain in full force and effect.

    b. Aviva has not waived, and does not intend to waive, any default or any right, entitlement, privilege, benefit or remedy which Aviva may have now or at any time in the future as a result of or in connection with any such default and nothing contained herein or the transactions contemplated thereby shall be deemed to constitute such waiver;

c. no waiver will be inferred from or implied by the Aviva Support, Aviva providing this letter agreement, or any failure to act or delay in acting by Aviva in respect of any default, breach or non-observance or by anything done or omitted to be done by the Principal or any Indemnitor.

d. Aviva expressly reserves its rights at any time to exercise any rights, remedies, power and privileges afforded by law or under the Commitment Letter and the Existing Security. Without limiting the foregoing, Aviva expressly reserves its rights to pursue claims against the Principal and the Indemnitors for any losses sustained and costs and expenses incurred including losses arising from claims made by presale purchasers and unpaid premiums.

9. This letter agreement may be executed in counterparts and such counterparts together shall constitute a single instrument. The parties acknowledge and agree that facsimile or PDF copies hereof or any part hereof shall be treated as originals, fully binding and with full legal force and effect, and hereby waive any rights they may have to object to said treatment.

All the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written or verbal consent of Aviva. Failure to observe this condition may result in either Aviva withdrawing or altering this consent.

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning on or before 5:00 p.m. on June 4, 2021.

Aviva Insurance Company of Canada

DocuSigned by:
Michael Sloniowski

Name: Michael Sloniowski
Title:

Name:
Title:

I/We have the authority to bind the Corporation

Accepted this 4th day of June, ~~2019.~~ 2021

Per: Port Capital Development Inc.

Name: Tobi Reyes
Title: Director

I have the authority to bind the Corporation

Per: Evergreen House Development Limited Partnership by its general partner Port Capital Development (EV) Inc.

Name: Tobi Reyes
Title: Director

I have the authority to bind the Corporation

Macario (Tobi) C. Reyes

Port Capital Development (EV) Inc.

Name: Tobi Reyes
Title: Director

I have the authority to bind the Corporation

1296371 B.C. Ltd.

Name: Tobi Reyes
Title: Director

I have the authority to bind the Corporation

This is Exhibit " C " referred to in the affidavit of Macario Reyes sworn before me at Vancouver, BC this 4 day of June, 2021

A Commissioner for taking Affidavits for British Columbia

IRREVOCABLE DIRECTION TO PAY

TO: **Dentons Canada LLP**
20th Floor, 250 Howe Street
Vancouver, British Columbia
V6C 3R8

Re: **Funds held in trust for Deposits for Terrace House Units**

Evergreen House Development Limited Partnership (the "**Old LP**") by its general partner, Port Capital Development (EV) Inc. (the "**Old GP**") pursued the development of a project located at 1250 West Pender Street, Vancouver, BC (the "**Terrace House Project**"). The undersigned has provided a deposit (the "**Deposit**") that is currently held in trust with Dentons Canada LLP ("**Dentons**") to acquire a unit in the Terrace House Project, the details of which are set out below.

CMLS Financial Ltd ("**CMLS**") was the Terrace House Project's construction lender pursuant to a commitment letter dated July 4, 2019 (the "**CMLS Loan**") as amended. The CMLS Loan is secured by, among other things, a first ranking mortgage against the Terrace House Project. The indebtedness on the CMLS Loan was approximately $20.1 million at the commencement of the CCAA Proceedings in 2020.

On May 29, 2020, Ernst & Young Inc. ("**EY**") was appointed as the monitor of the Terrace House Project pursuant to a court order of the BC Supreme Court (the "**CCAA Proceedings**"). The court also approved a debtor in possession loan (the "**DIP Loan**") in favour of Desjardins Financial Security Life Assurance Company ("**Desjardins**" or the "**DIP Lender**"). The indebtedness on the DIP Loan is projected to be $1.5 million as at April 30, 2021.

1296371 B.C. Ltd. (the "**Junior Lender**") has been created to participate in the acquisition of the CMLS Loan and the DIP Loan. Domain Mortgage Corp. and/or Bankers Mortgage Corp. doing business as Domain Funding (Domain Mortgage Corp. and Bankers Mortgage Corp., individually or collectively are "**Domain Funding**") as the new funder (the "**Senior Lender**") has agreed to provide the sum of $16M and Domain Funding has or will establish a new entity ("**Newco**") controlled by Domain Funding to acquire the CMLS Mortgage and the DIP Loan. The Senior Lender will have the first position of repayment under the acquired CMLS Mortgage and DIP Loan and the Junior Lender will have second position of repayment under the CMLS Mortgage pursuant to an interlender or co-lender agreement as between the Senior Lender and the Junior Lender. The CMLS Loan and DIP Loan will remain as charges on the real estate related to the Terrace House Project with the expectation that the Senior Lender would be repaid once new construction financing (the "**Construction Financing**") is obtained. The Construction Financing will be used to repay the Senior Lender and may be used as part of a plan to exit CCAA on terms to be determined. On the registration of the Construction Financing on the Terrace House Project, the Junior Lender would release the funds, including the Deposit, back into the Terrace House Project to be used as equity with each of the lenders to the Junior Lender, including the undersigned, being credited with a deposit against a unit in the Terrance House Project (the "**Transaction**").

This Direction is intended to reflect the general agreement of the undersigned to the use of the Deposit on the terms herein, subject to the consents (the "**Consents**") required to obtain the release of the Deposit from the trust account of Dentons being (1) the consent of the Monitor (on behalf of the developer), (2) the consent of CMLS and agreement to sell and assign the CMLS Loan, (3) the consent of the DIP Lender and agreement to sell and assign the DIP Loan, ~~and (4) the consent of the undersigned to release the Deposit after undersigned's counsel has reviewed the definitive documents required to effect the Transaction~~. SA. The additional conditions (the "**Conditions**") to the release of the Deposit are that CMLS, the DIP Lender and Newco finalize and sign a purchase agreement to allow Newco to acquire the CMLS Loan and the DIP Loan as well as the necessary Court approvals in the CCAA Proceedings.

Please accept this as your irrevocable authority and direction to, once you have obtained the Consents and the Conditions have been satisfied, to transfer the Deposit to 1296371 B.C. Ltd. in order to facilitate the loan by the Junior Lender to Newco so that Newco can acquire the CMLS Loan and the DIP Loan. This irrevocable authority and direction will terminate on August 31, 2021, unless extended by the undersigned in writing.

Name of Deposit Holder: 1192706 B.C. Ltd.
Deposit Amount Held in Trust at Dentons: $1,155,000.00
Unit: 1001

Dated this 18th day of April, 2021.

THE UNDERSIGNED HAS HAD THIS IRREVOCABLE DIRECTION TO PAY WITNESSED REMOTELY BY VIDEO CONFERENCE AND COMPLETED BY A LAWYER WHO HAS PROVIDED INDEPENDENT LEGAL ADVICE TO THE UNDERSIGNED.

WITNESSED BY:	
Witness Signature	1192706 B.C. LTD.
Nicholas J. Carlson	
Printed Name of Witness	
900 - 885 West Georgia St., Vancouver, BC	Authorized Signatory
Witness Address	Seal
Lawyer	
Witness Occupation	

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5A

IRREVOCABLE DIRECTION TO PAY

TO: **Dentons Canada LLP**
20th Floor, 250 Howe Street
Vancouver, British Columbia
V6C 3R8

Re: **Funds held in trust for Deposits for Terrace House Units**

Evergreen House Development Limited Partnership (the "**Old LP**") by its general partner, Port Capital Development (EV) Inc. (the "**Old GP**") pursued the development of a project located at 1250 West Pender Street, Vancouver, BC (the "**Terrace House Project**"). The undersigned has provided a deposit (the "**Deposit**") that is currently held in trust with Dentons Canada LLP ("**Dentons**") to acquire a unit in the Terrace House Project, the details of which are set out below.

CMLS Financial Ltd ("**CMLS**") was the Terrace House Project's construction lender pursuant to a commitment letter dated July 4, 2019 (the "**CMLS Loan**") as amended. The CMLS Loan is secured by, among other things, a first ranking mortgage against the Terrace House Project. The indebtedness on the CMLS Loan was approximately $20.1 million at the commencement of the CCAA Proceedings in 2020.

On May 29, 2020, Ernst & Young Inc. ("**EY**") was appointed as the monitor of the Terrace House Project pursuant to a court order of the BC Supreme Court (the "**CCAA Proceedings**"). The court also approved a debtor in possession loan (the "**DIP Loan**") in favour of Desjardins Financial Security Life Assurance Company ("**Desjardins**" or the "**DIP Lender**"). The indebtedness on the DIP Loan is projected to be $1.5 million as at April 30, 2021.

1296371 B.C. Ltd. (the "**Junior Lender**") has been created to participate in the acquisition of the CMLS Loan and the DIP Loan. Domain Mortgage Corp. and/or Bankers Mortgage Corp. doing business as Domain Funding (Domain Mortgage Corp. and Bankers Mortgage Corp., individually or collectively are "**Domain Funding**") as the new funder (the "**Senior Lender**") has agreed to provide the sum of $16M and Domain Funding has or will establish a new entity ("**Newco**") controlled by Domain Funding to acquire the CMLS Mortgage and the DIP Loan. The Senior Lender will have the first position of repayment under the acquired CMLS Mortgage and DIP Loan and the Junior Lender will have second position of repayment under the CMLS Mortgage pursuant to an interlender or co-lender agreement as between the Senior Lender and the Junior Lender. The CMLS Loan and DIP Loan will remain as charges on the real estate related to the Terrace House Project with the expectation that the Senior Lender would be repaid once new construction financing (the "**Construction Financing**") is obtained. The Construction Financing will be used to repay the Senior Lender and may be used as part of a plan to exit CCAA on terms to be determined. On the registration of the Construction Financing on the Terrace House Project, the Junior Lender would release the funds, including the Deposit, back into the Terrace House Project to be used as equity with each of the lenders to the Junior Lender, including the undersigned, being credited with a deposit against a unit in the Terrance House Project (the "**Transaction**").

This Direction is intended to reflect the general agreement of the undersigned to the use of the Deposit on the terms herein, subject to the consents (the "**Consents**") required to obtain the release of the Deposit from the trust account of Dentons being (1) the consent of the Monitor (on behalf of the developer), (2) the consent of CMLS and agreement to sell and assign the CMLS Loan, (3) the consent of the DIP Lender and agreement to sell and assign the DIP Loan~~, and (4) the consent of the undersigned to release the Deposit after undersigned's counsel has reviewed the definitive documents required to effect the Transaction~~. The additional conditions (the "**Conditions**") to the release of the Deposit are that CMLS, the DIP Lender and Newco finalize and sign a purchase agreement to allow Newco to acquire the CMLS Loan and the DIP Loan as well as the necessary Court approvals in the CCAA Proceedings. S.A.

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S.A.

Please accept this as your irrevocable authority and direction to, once you have obtained the Consents and the Conditions have been satisfied, to transfer the Deposit to 1296371 B.C. Ltd. in order to facilitate the loan by the Junior Lender to Newco so that Newco can acquire the CMLS Loan and the DIP Loan. This irrevocable authority and direction will terminate on August 31, 2021, unless extended by the undersigned in writing.

Name of Deposit Holder: 1208596 B.C. Ltd.
Deposit Amount Held in Trust at Dentons: $417,057.00 and $558,144.00
Unit: CRU#1 and CRU#2

Dated this 18th. day of April, 2021.

THE UNDERSIGNED HAS HAD THIS IRREVOCABLE DIRECTION TO PAY WITNESSED REMOTELY BY VIDEO CONFERENCE AND COMPLETED BY A LAWYER WHO HAS PROVIDED INDEPENDENT LEGAL ADVICE TO THE UNDERSIGNED.

WITNESSED BY:

Witness Signature

Nicholas J. Carlson
Printed Name of Witness

900 - 885 West Georgia St., Vancouver, BC
Witness Address

Lawyer
Witness Occupation

1208596 B.C. LTD.

Authorized Signatory

This is Exhibit " D " referred to in the affidavit of Macario Reyes sworn before me at Vancouver, BC this 4 day of June, 2021

A Commissioner for taking Affidavits for British Columbia

From: Lucy A. Consunji <luzcon@daconcorp.com>
Sent: Friday, June 4, 2021 11:11:05 AM
To: Tobi Reyes <tobi@portliving.com>
Subject: Re: Amended loan

Tobi, this is to certify that 1260780 BC Ltd agrees to increase the loan to C$2.150m.
Thabk you.

Funds in			
	Domain		$14,700,000.00
	NumberCo		$2,150,000.00
	Deposits		$8,005,201.00
	Pre-Payments to Domain		$105,000.00
TOTAL			$24,960,201.00
Funds out			
	Admin Charge		$507,627.17
	DIP		$1,308,662.72
	CMLS		$21,350,358.48
	Domain Fees		
		Commitment Letter Fee	$25,000.00
		Loan Servicing Fee	$18,125.00
		Broker Fee	$290,000.00
		Fund Raising Fee	$145,000.00
	Holdbacks		
		Lender Reporting Consult (Est)	$60,000.00
		Legal Fees (Est)	$50,000.00
		Interest Reserve	$851,250.00
		Monitor Fee Reserve	$100,000.00
	Break Fees		
		Landa	$200,000.00
		Solterra	$50,000.00
TOTAL			$24,956,023.37
RESIDUAL (SHORTFALL)			$4,177.63

This is Exhibit " E " referred to in the
affidavit of Macario Reyes
sworn before me at Vancouver, BC
this 4 day of June, 2021
A Commissioner for taking Affidavits
for British Columbia

This is the 4th affidavit
of Macario Teodoro Reyes in this case
and was made on 07/JUNE/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, **MACARIO TEODORO REYES**, businessman, of 325 West 4th Avenue, Vancouver, BC V5Y 1H3, SWEAR (OR AFFIRM) THAT:

1. I am a director and officer of Port Capital Group Inc. ("**Port Capital Group**"), the petitioner Port Capital Development (EV) Inc. (the "**General Partner**") and 1296371 B.C. Ltd. ("**129**"), and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.

2. I swear this affidavit to provide certain updates to matters described in my second affidavit, sworn May 21, 2021. Capitalized terms in this affidavit have the meaning given to them in my second affidavit, unless otherwise defined herein.

3. At paragraph 21 of my second affidavit, I noted that working capital for the Petitioners, after repayment of CMLS, would be provided by new investments from a mix of some existing limited partners, and some new third party investors. I expect the Petitioners will raise an additional $3 to $5 million, and I note we already have conditional commitments for $785,585 in new funding.

4. This new investment will be new equity capital, and will likely require amending the existing limited partnership structure to facilitate that investment. The amendment will likely involve the creation of a new class of limited partner units (the "**Class A Units**") within Evergreen House Limited Partnership (the "**LP**"), with preferential rights over the existing limited partnership units to facilitate that investment. However, the details of this restructuring are still being finalized. As a result, it is unlikely this investment will be in place immediately upon completion of the refinancing.

5. However, in order to ensure there is capital available immediately upon completion of the refinancing transaction, NumberCo (i.e. 1260780 B.C. Ltd.) has agreed to advance a further unsecured convertible loan to the Petitioners, in the maximum principal amount of $750,000 (the "**Convertible Loan**"). The Convertible Loan will, at NumberCo's option, convert into Class A Units following the restructuring outlined above.

6. Now shown to me and attached hereto as **Exhibit "A"** is a copy of the commitment letter, signed by NumberCo and the Petitioners, in respect of the Convertible Loan. I am informed by Robert Quon, of Dentons, and verily believe the same to be true, that Dentons holds the funds required to advance this loan in trust.

7. I understand $750,000 is sufficient to allow the Petitioners to meet the minimum required expenses that will be incurred over the six-month extension period being sought in connection with the CMLS refinancing transaction.

SWORN (OR AFFIRMED) BEFORE ME at Vancouver, BC, on 04/JUNE/2021	
A Commissioner for taking Affidavits within British Columbia	**MACARIO TEODORO REYES**

NATDOCS\568308\333\55729627\V-1

This is **Exhibit "A"** referred to in the
Affidavit of T. REYES sworn
this 7th day of June, 2021.

A Commissioner for taking Affidavits within
British Columbia

1260780 B.C. LTD.
Commitment Letter

$750,000
Unsecured Convertible Loan Facility

Borrowers:	Evergreen House Development Limited Partnership (the "**LP**"); and Port Capital Development (EV) Inc. (collectively, the "**Borrowers**").
Lender:	1260780 B.C. Ltd. (the "**Lender**").
Loan Facility:	Subject to the conditions below, the Lender hereby agrees to advance, in such amounts as may be requested by the Borrowers from time to time, to a maximum principal amount of $750,000 (the "**Loan Facility**").
Interest:	NIL
Term:	On the date of satisfaction of all condition(s) precedent set out in this letter to **December 31, 2021,** subject to any extension(s) as the Lender, in its sole discretion, may agree (the "**Term**" and the last day of the Term shall be referred to as the "**Maturity Date**").
Repayment:	Repayable at any time, at the option of the Borrowers, or upon the Maturity Date, whichever occurs first.
Conversion:	The Lender shall have the right, in its sole discretion, at any time and from time to time, on ten (10) days' written notice to the Borrowers, to elect to convert (the "**Conversion**") on the date(s) specificed in such notice(s) all or part of the unpaid principal amount outstanding from time to time into that number of limited partnership units in the LP, either existing or to be created, that will be preferential to all classes of units in the LP including, without limitation, with respect to preferential return, payment of net income of the LP, and return of capital (the "**Conversion Units**"), at the subscription price of one (1) dollar for each Conversion Unit. The Lender may assign at any time and from time to time its right to acquire the Conversion Units to any person or persons, without the consent of the Borrowers, provided the Lender has provided notice to the Borrowers and has specified in such notice the amount of Conversion Units being assigned, and the acquisition of the Conversion Units by such person or persons does not violate any applicable law or statute. Upon completion of the Conversion, the Borrowers shall be released and discharged from their obligations and liabilities under this letter with respect to the portion of the Loan Facility that is subject of Conversion. The Lender and its assignees shall be entitled to receive and to become the

	holder of record of such number of Conversion Units as determined in the preceding paragraphs, and the Conversion Units shall be fully paid and non-assessable.
Use of Proceeds:	For working capital purposes only.
Conditions Precedent:	• Completion of the refinancing transaction among Domain Mortgage Company, as lender, the Borrowers, as borrowers, and others, to facilitate repayment of all amounts owing to CMLS Financial Ltd. and the assignment of all security held therefor.
Further Assurances:	Each party to this letter agrees to execute and deliver all such further documents and materials and do such further acts and things as may be reasonably necessary from time to time to give effect to this letter.
Time of Essence:	Time shall be of the essence.
Enurement:	This letter will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
Counterparts:	This letter may be executed in counterparts and in electronic form and each of such counterpart will be deemed to be an original, and all of such counterparts, when taken together, will constitute on and the same letter.

[Signature Page Follows]

This letter shall be governed and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

1260780 B.C. LTD.

Per:

EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP,
by its general partner, **PORT CAPITAL DEVELOPMENT (EV) INC.**

Per

PORT CAPITAL DEVELOPMENT (EV) INC.

Per

No. S205095
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: Centura Building Systems (2013) Ltd. ("**Centura**") and Solterra Acquisitions Corp. ("**Solterra**", and together with Centura, the "**Application Respondents**")

THIS IS A RESPONSE TO the Notice of Application of 1296371 B.C. Ltd. filed May 25, 2021 (the "**129 Notice of Application**").

Part 1:ORDERS CONSENTED TO

The Application Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: N/A.

Part 2: ORDERS OPPOSED

The Application Respondents oppose the granting of ALL of the orders set out in Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondents take no position on the granting of the orders set out in paragraphs N/A of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

1. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the 129 Notice of Application.

2. Centura is related to Solterra.

3. Centura has a claim against the Petitioner Port Capital Development (EV) Inc. in the amount of $473,277 relating to the supply of exterior precast panels for the Terrace House Project, and has filed a claim of builders lien against the Terrace House Project.[1]

4. 129 seeks orders facilitating a refinancing of a portion of the Petitioners' debt, including specifically by way of the assignment to the New Lenders of the CMLS Facility and the CMLS Security, and the amendment of such security to increase the amount secured thereunder and the rate of interest thereunder.

5. Specifically, 129 seeks orders:

   (a) authorizing the Petitioners and the New Lender to enter into agreements amending the CMLS Security such that it then secures all amounts owing from the Petitioners to the New Lenders; and

   (b) that the CMLS Security become a court-ordered charge which "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… and those claims contemplated by Section 11.8(8) of the CCAA."

6. Currently, there is less than $21.5 million owing to CMLS under the CMLS Facility and secured under the CMLS Security. The rate of interest under the CMLS Facility is prime plus 2.25% per annum.[2]

7. 129 is seeking to have the CMLS Security amended such that it will then secure approximately $25 million in principal with interest thereon at no less than 10.5% per annum, compounding monthly, or as much as 24% per annum, compounding monthly.[3]

8. While there is evidence that Aviva has entered into an agreement with the Petitioners and 129 by which Aviva has agreed that the Petitioners and the New Lenders can amend the

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[1] Affidavit #1 of Suzanne Volkow sworn June 8, 2021, Exhibit "A".

[2] Affidavit #1 of Macario Reyes sworn May 18, 2020, Exhibit "C".

[3] Affidavit #3 of Macario Reyes sworn June 4, 2021, Exhibit "A".

CMLS Security in the manner proposed, there is no evidence that any of the builders' lien claimants (or other creditors) have similarly agreed.

9. Centura opposes the relief sought by 129.

Part 5: LEGAL BASIS

1. 129 seeks relief that this court ought not grant. Specifically, 129 seeks orders that:

> 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.

2. Practically, the court is being asked to create new, first-ranking security in favour of the New Lenders which secures approximately $25 million in principal at differing rates, but not less than 10.5% per annum, compounded monthly, and as much as 24% per annum, compounded monthly. Presently, the CMLS security secures less than $21.5 million and the interest rate is prime plus 2.25% per annum.

3. Let there be no mistake: 129 is not seeking an order simply authorizing the assignment of debt and security. Rather, it is seeking an order creating a court ordered charge on all of the Property ranking ahead of all other encumbrances other than the Administration Charge. That court-ordered charge would secure $3.5 million more than what is currently secured under the CMLS Security and at rates from approximately 6% to as much as approximately 20% per annum more than the current security in favour of CMLS.

4. 129 is seeking the aforementioned order and related relief on the basis of section 11 of the CCAA, which permits the court to "make any order that it considers appropriate in the circumstances."

5. With respect, while the court may have the jurisdiction to make the order sought by 129, it ought not to exercise its discretion to make such an order.

6. Simply put, the CCAA does not contemplate a debtor company – or any other party – obtaining a court order permitting or directing the debtor company to undertake any

restructuring transaction without the consent of affected creditors. That, in essence, is what 129 seeks to do.

7. After the initiation of a CCAA proceeding, there are two possible outcomes:

(a) The assets of the debtor company (or, in the case of a reverse vesting order, its shares) are conveyed to a purchaser. In this instance, the debtor company (or its shareholders) retain no further interest in the assets. Secured creditors' interests are vested off by court order and proceeds of sale are distributed to creditors in order of priority.

This outcome can be achieved either as part of a plan of arrangement put to the debtor company's creditors for approval, or by way of a court order.

(b) The debtor company retains an interest in its assets, either because it is able to pay its creditors in full or because its creditors have agreed, individually or as part of a class voting on a plan of arrangement, to have their rights compromised.

8. The outcome urged upon this court by 129 is not one contemplated by the CCAA, namely, the debtor company retaining its interest in its assets without the agreement of creditors whose rights are being compromised. In this case, it is proposed that encumbrancers of the Terrace House Project be subordinated to new financing that is approximately $3.5 million more than the financing they were subordinated to upon the initiation of these proceedings without the opportunity for any consultation, let alone their approval.

9. There is no doubt that 129 seeks orders that will have the effect of compromising or confiscating the rights of the builders lien claimants, in this case by subordinating them to new financing. While the Petitioners could, in the ordinary course, agree with CMLS (or the assignee of its security) to amend its security in order to secure a greater amount at higher rates, such modifications would be ineffective as against subsequent encumbrancers, including lien claimants.[4]

10. 129 requires orders of this court in order to implement the restructuring transactions in the face of the subsequent encumbrancers' (i.e. lien holders) rights. The confiscation of those rights is, by definition, a "plan of arrangement".[5] Where there is a plan of arrangement, the court cannot sanction it unless it has been approved by the requisite majorities of the company's creditors.[6]

11. 129 seeks to simply do away with the need for creditor approval.

12. It is not sufficient for 129 (or anyone else) to say that the orders sought are appropriate simply on the basis that the alternative is a transaction whereby all of the creditors' interests are vested off in any event. This is so for two reasons:

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[4] *Land Title Act*, R.S.B.C. 1996, c. 250, sections 1 and 206.

[5] *9354 – 9186 Quebec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 102.

[6] *Calpine Canada Energy Ltd., Re*, 2007 ABQB 504 at para. 41.

(a) That argument could be applied in effectively every restructuring scenario proposed by a debtor. There is no difference in the debtor presenting to the court a plan to compromise creditors' claim at 10 cents on the dollar and asking the court to bless it without a vote of the creditors "because the alternative is those creditors will get nothing". In either scenario, creditors' rights are being compromised for the debtors' benefit without them having any say in the matter.

(b) Relating to the foregoing, it is entirely conceivable that the builders lien claimants would prefer that a new developer acquire the Terrace House Project and complete it, even if their lien claims are vested off title. In many cases, suppliers have leverage aside from their lien claims, including because they are required to sign off on completion for engineering reports and permits, or because their work is sufficiently advanced that hiring a replacement is economically impractical.

13. There is no doubt that in the context of a CCAA proceeding creditors' rights are limited. That is not to say they may be disregarded completely. Where the debtor company seeks orders of the court authorizing a restructuring transaction which necessarily compromises creditors' rights – let alone an order creating a charge in priority to those creditors – at the very least those creditors are entitled to agree whether to have their rights compromised.

14. This facts of this case are almost entirely similar to those in *Cliffs Over Maple Bay*.[7] In that case, on the comeback hearing the debtor company sought an extension of the stay of proceedings and authorization to borrow $2,350,000 by way of interim financing. The application was opposed by the secured lender. The court granted the orders sought, but was overturned on appeal.

15. In his decision, Tysoe J.A. held as follows:

> 31 The filing of a draft plan of arrangement or compromise is not a prerequisite to the granting of a stay under s. 11: see *Fairview Industries Ltd., Re* (1991), 109 N.S.R. (2d) 12, 11 C.B.R. (3d) 43 (N.S. T.D.). In my view, however, a stay should not be granted or continued if the debtor company does not intend to propose a compromise or arrangement to its creditors…
>
> …
>
> 35 It was not suggested in the petition, nor in the Monitor's report before the chambers judge at the comeback hearing, that the Debtor Company intended to propose an arrangement or compromise to its creditors before embarking on its restructuring plan. In my opinion, in the absence of such an intention, it was not appropriate for a stay to have been granted or extended under s. 11 of the CCAA…
>
> …
>
> 38 I wish to add that it was open, and continues to be open, to the Debtor Company to propose to its creditors an arrangement or compromise along the

[7] *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 ("***Cliffs Over Maple Bay***").

> lines of the restructuring plan described in paragraph 47 of the petition, although it may be a challenge to make such a plan attractive to its creditors. The creditors could then vote on such an arrangement or compromise which would involve, on their part, the concession that their rights would remain frozen while the Debtor Company carried out its restructuring. What the Debtor Company was endeavouring to accomplish in this case was to freeze the rights of all of its creditors while it undertook its restructuring plan without giving the creditors an opportunity to vote on the plan. The CCAA was not intended, in my view, to accommodate a non-consensual stay of creditors' rights while a debtor company attempts to carry out a restructuring plan that does not involve an arrangement or compromise upon which the creditors may vote.
>
> [Emphasis added]

16. There is no distinction between what the debtor company proposed in *Cliffs Over Maple Bay* and what 129 is proposing in this case. Notably:

    (a) There is no suggestion anywhere in Mr. Reyes' Affidavits #2, #3 or #4 that 129, the Petitioners or any other party intends to put forward a plan of arrangement or compromise on which the Petitioners' creditors may vote.

    (b) What 129 is proposing is exactly what the Court warned against in *Cliffs Over Maple Bay*, namely freezing the rights of creditors while the Petitioners: (i) seek to secure additional "interim working capital" from their current investors and new third party investors; and (ii) "new construction financing that will allow the Petitioners to repay the New Loan Facility and exit *CCAA* proceedings."[8]

17. 129 is seeking nothing more than to use these *CCAA* proceedings to effect financings that are otherwise unavailable to the Petitioners. In essence, 129 is proposing simply that the Petitioners continue to simply borrow their way out of their current financial difficulties. That is not a restructuring, and it is not in keeping with the purpose of the *CCAA*.

18. With respect, to authorize the transactions and grant a super-priority charge to secure new financing as proposed by 129, all without providing creditors the opportunity to vote on a plan, would be contrary to the purpose of the *CCAA* and the relevant authorities.

19. For the foregoing reasons, the application of 129 should be dismissed.

Part 6:MATERIAL TO BE RELIED ON

1. Affidavit #1 of Macario Reyes sworn May 18, 2020;

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

3. Affidavit #3 of Macario Reyes sworn June 4, 2021;

4. Affidavit #4 of Macario Reyes sworn June 7, 2021;

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[8] 129 Notice of Application, paras. 27-34 under "Restructuring Plan".

5. Affidavit #1 of Suzanne Volkow sworn June 8, 2021; and

6. Such further and other material as counsel may advise and as this Honourable Court deems admissible.

The Application Respondent estimates that the application will take 90 minutes.

The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Dated: 08-Jun-2021

Signature of Kibben Jackson
Lawyer for Application Respondent

The Solicitors for Solterra Acquisitions Corp. 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)

This is the 1st Affidavit
of Suzanne Volkow in this case
and was made on June 8, 2021

No. S205095
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

AFFIDAVIT

I, Suzanne Volkow, of 2900 – 550 Burrard Street, Vancouver, British Columbia, SWEAR THAT:

1. I am a legal assistant in the law firm of Fasken Martineau DuMoulin LLP, solicitors for Centura Building Systems (2013) Ltd. and Solterra Acquisitions Corp., and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.

2. Attached hereto as **Exhibit "A"** is a copy of a Claim of Lien registered on behalf of Centura Building Systems (2013) Ltd. against 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

SWORN BEFORE ME at Vancouver, British Columbia, on June 8, 2021.	)	
A Commissioner for taking Affidavits for British Columbia	)	SUZANNE VOLKOW

KIBBEN JACKSON
Barrister & Solicitor
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3
604 631 4786

NEW WESTMINSTER LAND TITLE OFFICE

BUILDERS LIEN ACT
FORM 5 (Sections 15, 16, 18)

May-20-2020 12:53:06.001

CA8198230

CLAIM OF LIEN Province of British Columbia

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

Christopher James Moore 8FUUN8 — Digitally signed by Christopher James Moore 8FUUN8 Date: 2020.05.20 12:51:28 -07'00'

APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

McLean & Armstrong LLP
300 - 1497 Marine Drive
West Vancouver BC V7T 1B8
Tel: 604-925-0672
File No: 3367-11
Document Fees: $0.00

I, Chris Moore of McLean & Armstrong LLP
300 - 1497 Marine Drive, West Vancouver, BC, V7T 1B8, agent of the lien claimant state that:

1. CENTURA BUILDING SYSTEMS (2013) LTD. Incorporation No BC0959038

of 460 Fraser View Place, Delta, BC V3M 6H4
claims a lien against the following land:
[PID] [legal description]

SEE SCHEDULE

STC? YES ☐

This is Exhibit A referred to in the affidavit of Suzanne Volkow made before me on this 8th day of June 2021

A Commissioner for taking Affidavits for British Columbia

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

Supplying precast panels, planters, super panels and engineering

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

PORT CAPITAL DEVELOPMENT (EV) INC. (BC1005887)

4. The sum of $ 473,277.00 is or will become due and owing to CENTURA BUILDING SYSTEMS (2013) LTD. (BC0959038) on May 20, 2020.

5. The lien claimant's address for service is:

c/o McLean & Armstrong LLP
300 - 1497 Marine Drive, West Vancouver, BC, V7T 1B8

Signed: ____________________

Date:

Note: Section 45 of the Builders Lien Act provides as follows:

45 (1) A person who knowingly files or causes an agent to file claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of $2,000 and the amount by which the stated claim exceeds the actual claim.

ADDITIONAL PARCEL INFORMATION

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

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**

STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES ☐

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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
(Stay Extension Order & Increase in Interim Financing)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	11/June/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the ~~15th~~ 11th 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, to be filed (**"Sixth Report"**) and the Confidential Supplement to the Sixth 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:

STAY EXTENSION

1. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Orders of this

Court pronounced February 24, 2021 and April 16, 2021, is hereby continued and extended to and including September 30, 2021.

INCREASE OF INTERIM LENDING

2. The Petitioners are hereby authorized and empowered to enter into an amended and restated credit facility on substantially the same terms and conditions set forth in commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, provided that the cumulative borrowings under the Interim Facility as amended shall not exceed the principal amount of $1,800,000 unless permitted by further order of this court.

3. The Interim Lender shall be entitled to the benefits of the Interim Lender's Charge as defined in the ARIO with respect to the additional borrowing under the amended and restated credit facility, which Interim Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the amended and restated credit facility or the Definitive Documents.

4. Paragraphs 37 of the ARIO shall be amended as follows:

   37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "Interim Lender") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed $1,800,000 unless permitted by further Order of this Court.

GENERAL

5. 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:

BY THE COURT

REGISTRAR

ENDORSEMENTS ATTACHED

CHECKED

S205095
500Vancouver

Signature of David Gruber
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	Solterra Acquisitions Corp.
Alan Frydenlund	Domain Mortgage Corp.

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

David Gruber
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RUSH