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

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE	)	15
MADAM JUSTICE FITZPATRICK	)	~~23~~/June/2021

8th + 10th — + K. [illegible]

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the ~~23rd~~ days of June 2021; AND ON HEARING David Gruber, counsel for the Petitioners and those other counsel and parties listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Sixth Report of Ernst & Young Inc., in its capacity as court appointed monitor ("**Sixth Report**"), the Confidential Supplement to the Sixth Report, and the Confidential Seventh Report of Ernst & Young Inc. ("**Seventh Report**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Purchase and Sale Agreement dated for reference June 4, 2021 (the "**Sale Agreement**") between the Petitioners and Solterra Acquisitions Corp. (the "**Purchaser**") attached to this Order as Schedule "B", a copy of which is attached as Appendix "C" to the Seventh Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Petitioners is hereby authorized and approved, and the Petitioners are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the

Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

2. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule "C" hereto (the "**Monitor's Certificate**"), the following shall occur and be deemed to have occurred on the Closing Date in the following sequence:

   (a) First, the Monitor shall incorporate a subsidiary (hereafter, "**Residual Co**") of Port Capital Development (EV) Inc. ("**GP**"), and Residual Co shall be added as a Petitioner in these CCAA Proceedings pursuant to paragraph 9 herein;

   (b) Second, all of the Petitioners' right, title and interest in and to the Excluded Assets as defined in the Sale Agreement, shall vest absolutely and exclusively in Residual Co, and any and all Claims and Encumbrances (as those terms are defined below) shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

   (c) Third, GP shall issue one common voting share (the "**New Common Share**") to the Purchaser, or such other entity as the Purchaser may direct, and, concurrently, and without the need for any further action by GP or any of its shareholders, directors or officers, all other issued and outstanding securities of GP (i.e. excluding the New Common Share), including without limitation any shares in GP, any options and warrants issued by GP to acquire any shares in GP, and any other document, instrument or writing of GP commonly known as a security, are hereby cancelled, none of which shall be with any further force or effect, and the obligations of GP thereunder, or in any way related thereto, shall be satisfied and discharged, with no compensation or participation being provided or payable therefor, or in connection therewith, and all certificates formerly representing any such securities shall be deemed to be cancelled and shall be null and void;

   (d) Fourth, all of the Petitioners' right, title and interest in and to the Purchased Assets as described at section 1.1(tt)(i) in the Sale Agreement shall vest absolutely in the GP, or such other entity as the Purchaser may direct, in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by any order of this court, including those created by the June 8, 2020 order of this court; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule "D" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets; and

(e) Fifth, GP shall cease to be a Petitioner in these CCAA Proceedings and shall be deemed released from the purview of all Orders of this Court granted in respect of these CCAA Proceedings, save and except for this Order.

3. Upon presentation for registration in the Land Title Office for the Land Title District of Vancouver of a certified copy of this Order, together with a letter from Bennett Jones LLP, solicitors for the Petitioners, authorizing registration of this Order, the British Columbia Registrar of Land Titles, having considered the interest of third parties, is hereby directed to discharge, release, delete and expunge from title to the Lands as identified in Schedule "F", all of the registered Encumbrances except for those listed in Schedule "E".

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. The Monitor is to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

6. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Petitioners to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed in Schedule "E".

7. The Monitor, on behalf of the Petitioners, and the Purchaser, are at liberty to agree to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

8. Notwithstanding:

(a) these proceedings;

(b) any applications for a bankruptcy order in respect of the Petitioners now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Petitioners,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners and shall not be void or voidable by creditors of the Petitioners, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. As of the Closing Date and in the sequence set out in paragraph 2 herein:

   (a) Residual Co shall be a company to which the CCAA applies;

   (b) The Corporate Entity referred to herein as Residual Co shall be added as a Petitioner in these CCAA Proceedings and all references in any Order of this Court in respect of these CCAA Proceedings to (i) the "Petitioners" shall be deemed to refer to and include Residual Co as defined in the Monitor's Certificate, *mutatis mutandis,* and (ii) "Property" shall be deemed to refer to and include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residual Co; and

   (c) The Monitor shall be exempt from compliance with section 23(1)(a) of the CCAA with respect to Residual Co.; provided, however, that, within five days of the Closing Date, the Monitor shall make this Order publicly available in the manner prescribed under the CCAA.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

11. The Monitor or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

12. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of DAVID GRUBER
☐ Party ☑ Lawyer for the Petitioners

BY THE COURT

REGISTRAR

June 23/21.

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 / K WATSON	1296371 B.C. Ltd.
Kibben Jackson and Glen Nesbitt	Solterra Acquisitions Corp.

Alan Frydenlund	Domain Mortgage Corp.
S. A. TURNER	LANDA GLOBAL ACQUISITION LTD

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

NEED TO ADD IN AGREEMENT

Schedule C – Monitors Certificate

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

MONITOR'S CERTIFICATE

A. By order made May 29, 2020, this Court appointed Ernst & Young Inc. as monitor (the "**Monitor**") of each of the Petitioners pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**").

B. Pursuant to an order of the Court dated • (the **"Approval and Vesting Order"),** the Court approved the sale of the Purchased Assets to •. (the **"Purchaser")** pursuant to the purchase and sale agreement among the Petitioners and the Purchaser dated for reference June 4, 2021 **(the "Sale Agreement"),** providing for the vesting in the Purchaser of all of the Petitioners' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order.

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has incorporated Residual Co in accordance with the Approval and Vesting Order.

2. The Monitor confirms on behalf of the Petitioners, and has received written confirmation from the Purchaser, that all conditions of completion of the Sale agreement have been satisfied or waived by the applicable parties.

3. The Purchase Price payable under the Sale Agreement has been received by the Monitor or the Petitioners' solicitor.

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

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

Per: ______________________________

Name:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule E – Permitted Encumbrances, Easements and Restrictive Covenants related to Real Property

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown of any of the Lands and the statutory exceptions to title currently applicable to the Lands;

2. A claim of right, title or jurisdiction which may be made or established by any aboriginal peoples by virtue of their status as aboriginal peoples to or over any Lands;

3. Liens for taxes, assessments, rates, duties, charges or levies not at the time due, which related to obligations or liabilities assumed by the Purchaser.

4. The encumbrances listed below with respect to the Lands:

   a) Easement No. BP238635

   b) Restrictive Covenant No. R18424

   c) Easement and Indemnity Agreement No. J7909

   d) Easement No. BP238634

Schedule "F" – Legal Description of Lands

PID: 006-721-397; LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92

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
BENNETT JONES LLP
Barristers & Solicitors
Suite 2400, 666 Burrard St
Vancouver, BC V6C 2X8

Business Phone: (604) 891-5150
Business E-mail: gruberd@bennettjones.com

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

THIS AGREEMENT is dated for reference June 4, 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:

SOLTERRA ACQUISITIONS CORP., a British Columbia corporation 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 Vendor agrees to sell and the Purchaser has agrees 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:

(a) "**Additional Purchase Price**" means $2 million if all of the Presale Purchasers complete the Retained Presale Agreements, or a proportionate amount of $2 million based on the total amount paid by the Presale Purchasers who complete

MB

the Retained Presale Agreements in comparison to the total purchase price under all of the Retained Presale Agreements.

(b) "**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 has approved by way of notice in writing to the Vendor on or before the Condition Date.

(c) "**Approval and Vesting Order**" has the meaning given to it in Section 8.4(b)(ii).

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

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

(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 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) September 15, 2021; (ii) the date that is 30 days after the granting of the Final Order; and (iii) 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) "**Condition Date**" means the date on which the conditions precedent set out in Section 8.1(a) are satisfied or waived.

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

(p) "**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

MB

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.

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

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

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

(t) "**Deposit**" means the deposits referred to in Sections 2.2(a) through 2.2(d).

(u) "**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.

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

(w) "**Execution Date**" means the date this Agreement is fully executed by all parties to the Agreement.

(x) "**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 a 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, except for the Retained Presale Agreements, 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.

(y) "**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.

(z) "**Final Order**" has the meaning given to it in Section 8.4(b).

(aa) "**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.

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

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

(dd) "**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.

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

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

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

(hh) "**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.

(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 $500,000.00; 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) "**Permitted Encumbrances**" means the Encumbrances set out in Part 2 of Schedule A.

(nn) "**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.

(oo) "**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.

(pp) "**Presale Purchasers**" means those parties having Pre-Sale Contracts with the Vendor and whose deposits have not been released to the Vendor, but remain in trust.

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

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

MS

(ss) "**Purchase Price**" means subject to Section 5.4, **Twenty-Three Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Dollars ($23,666,666.00)**, 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;

MB

(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 Synergy Business Lawyers, 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) "**Retained Presale Agreements**" means the Pre-Sale Contracts entered into by the Presale Purchasers and the Vendor.

(xx) "**Reverse Vesting Order**" has the meaning given to it in Section 8.4(b)(i).

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

(zz) "**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.

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

(bbb) "**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.

(ccc) "**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.

(ddd) "**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 **Two Hundred Thousand Dollars ($200,000.00)** already paid to the Vendor's Solicitors;

(b) by a second deposit of **Eight Hundred Thousand Dollars ($800,000.00)** already paid to the Vendor's Solicitors;

(c) by a third deposit of **One Million ($1,000,000)** paid to the Vendor's Solicitors within two (2) Business Days after the Vendor obtaining the Approval and Vesting Order;

(d) 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.

(e) within thirty (30) days of completion of sales of all units in the development, the Purchaser will pay the Additional Purchase Price to the Vendor.

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 8.8):

(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;

MY

(b) the Purchaser with interest (less the $10.00 paid by the Purchaser to the Vendor pursuant to Section 8.3):

(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 8.4 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) $23,666,664.00 to the Lands and Buildings; and (iii) $1.00 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) $23,666,665.00 to the Lands and Buildings; and (ii) $1.00 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;

MB

(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, as soon as reasonably possible following the Execution Date, deliver to the Purchaser a copy of the Buyer List;

(e) from the Execution Date until the satisfaction or waiver of all of the conditions precedent set out in Section 8.1(a), 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 prior written notice to the Purchaser, and from the date of satisfaction or waiver by the Purchaser of all of the conditions precedent set out in Section 8.1(a) 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;

(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; and

(i) throughout the Interim Period, grant to the Purchaser and its authorized representatives the right to enter upon the Property during business hours upon reasonable notice for the purposes of carrying out such inspections, examinations, tests and surveys, including soil tests, as the Purchaser may deem necessary; provided that the Purchaser shall indemnify and save harmless the Vendor from any and all loss, cost or damage suffered as a direct result of the Purchaser exercising its rights pursuant to this clause.

MB

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

MVB

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 or the satisfaction or waiver by the Purchaser of any condition set out in Section 8.1, the subject matter of which is contained in a representation or warranty in this Agreement.

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

MB

(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 Satisfaction and Waiver of Purchaser's Conditions. The parties agree that if the Purchaser does not give notice to the Vendor by the Condition Date that the condition precedent set out in Section 8.1(a) is satisfied or waived, 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).

8.3 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 8.4 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.

8.4 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) [Intentionally Deleted];

MJ

(b) 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**").

8.5 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 8.4(b) that the conditions in those Sections are 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 any of the conditions set out in Section 8.4 shall not constitute a default of either party.

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) 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.

8.7 [Intentionally Deleted].

8.8 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 8.4 and 8.6 and the Purchaser acknowledges

MB

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.

8.9 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).

8.10 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.

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;

MB

(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

MW

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 September 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 September 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

MY

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 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:

Solterra Acquisitions Corp.
460 Fraserview Place
Delta, BC V3M 6H4

Attention: Gerry Nichele
E-mail: Gnasst@niradia.com

with a further copy to the Purchaser's Solicitors:

Synergy Business Lawyers LLP
#2300 – 925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Harry Tomyn
E-mail: htomyn@synergylaw.ca

MB

(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, 8.4 or 8.6, 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 any one or more affiliates (within the meaning of the *Business Corporations Act* (British Columbia)) of the Purchaser or to one or more limited partnerships in which the general partners are affiliates (within the meaning of the *Business Corporations Act* (British Columbia)) of the Purchaser if: (i) the Purchaser delivers written notice of such assignment(s) to the Vendor; (ii) the assignee(s) enters into an agreement pursuant to which the assignee(s) 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(s) 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.

VB

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

[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.

SOLTERRA ACQUISITIONS CORP.

By: ______________________________
Name: Gerry Nichele
Title: President

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

MB

This is the 5th affidavit
of Macario Teodoro Reyes in this case
and was made on 30/JUL/2021

Court of Appeal File No. CA-47585
Supreme Court File No. S-205095
Supreme Court Registry: Vancouver

COURT OF APPEAL

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

BETWEEN:

PORT CAPITAL DEVELOPMENT (EV) INC. and
EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

Respondents
(Petitioners/Applicants)

AND:

1296371 B.C. LTD.

Appellant
(Respondent/Applicant)

AND:

CENTURA BUILDING SYSTEMS (2013) LTD. and
SOLTERRA ACQUISITIONS CORP.

Respondents
(Respondents)

<u>AFFIDAVIT</u>

I, **MACARIO TEODORO REYES**, businessman, of 328 West 2nd Avenue, Vancouver, BC V5Y 1C8, 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, third affidavit, sworn June 4, 2021, and fourth affidavit, sworn June 7, 2021. Capitalized terms in this affidavit have the meaning given to them in those affidavits, unless otherwise defined herein.

3. Attached to my third affidavit is a copy of the Second Domain Commitment Letter. Pursuant to Articles 12 and 17 of the Second Domain Commitment Letter, Domain's commitment to fund the New Loan Facility lapsed on June 16, 2021, as a result of the chambers judge dismissing 129's application. Now shown to me and attached hereto as **Exhibit "A"** is a true copy of a letter from Domain committing to extend the condition removal date to September 30, 2021, upon payment of the outstanding brokerage fees and legal costs, provided leave to appeal is granted by the British Columbia Court of Appeal.

4. At paragraph 11 of my third affidavit, I swore that I was informed by Robert Quon ("**Mr. Quon**"), of Dentons, and verily believed the same to be true, that Dentons held the NumberCo Loan funds in trust. The NumberCo Loan funds were increased from $1.5 million (see paragraph 15(b) of my second affidavit) to $2.15 million.

5. At paragraphs 5-6 of my fourth affidavit, I swore that I was informed by Mr. Quon, and verily believed the same to be true, that Dentons held the Convertible Loan funds of $750,000 in trust.

6. In total, Dentons held $2.9 million in trust with respect to the refinancing transaction.

7. Following the chambers judge's order dismissing 129's application to refinance the Terrace House Project, $400,000 of these funds were directed to other projects. I am informed by Mr. Quon, and verily believe the same to be true, that Dentons holds $2.5 million in trust for the purposes described in my previous affidavits. The remaining $400,000 will be replaced before the August 17th, 2021 hearing on the application for leave to appeal.

SWORN (OR AFFIRMED) BEFORE ME at Vancouver, BC, on 30/JUL/2021 A Commissioner for taking Affidavits within British Columbia	 **MACARIO TEODORO REYES**

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

NATDOCS\568308\333\56933151\V-2

DOMAIN FUNDING

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

Friday, July 30, 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

This is Exhibit " A " referred to in the affidavit of Macario Teodoro Reyes sworn before me at Vancouver, BC this 30 day of July, 2021

A Commissioner for taking Affidavits for British Columbia

Dear Sir:

THIRD REVISED COMMITMENT LETTER ("3RCL")

Once executed by the Borrower(s) and Covenantor(s), this Third Revised Commitment Letter (the "3RCL") supersedes and cancels the previously issued Second Revised Commitment Letter dated June 4, 2021 (the "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

2

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").

Initials of Borrower(s)/Covenantor(s):

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)	$	60,000.00
Total Uses of Funds	**$**	**24,216,316.75**
Total Uses of Funds (Rounded)	**$**	**24,217,000.00**

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 Fees (after Aug. 6 pyt.)	$	294,000.00
Paid Amount of Lender's legal fee	$	27,000.00
Additional Equity requirement and/or Junior Lender requirement (est.)	$	9,196,000.00
Total Sources of Funds	**$**	**24,217,000.00**

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

Initials of Borrower(s)/Covenantor(s):

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 October 22, 2021 and NOT AFTER October 29, 2021, subject to the following prior events:

(i) On or before Sept. 30, 2021, receipt by the Lender of a Decision of the BC Court of Appeal to approve the assignment and transfer of the Existing Security, 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:	$10,500,000.00 (the "First Loan Segment") <u>$ 4,200,000.00</u> (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 March 31, 2022:</u> The greater of Prime + 8.05% per annum or 10.50% per annum, compounded monthly <u>Commencing April 1, 2022:</u> 12.00% per annum, compounded monthly

Interest Calculation Period:	Monthly
Payment Dates:	1st day of month during Loan Term
Interest Adjustment Date:	November 1, 2021
First Payment Date:	December 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: May 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:	November 1, 2021
First Payment Date:	December 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: May 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.

Initials of Borrower(s)/Covenantor(s):

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 BC Court of Appeal approval in CCAA Proceeding No. S-205095 approving the transfer and assignment of the Existing Loans and the Existing Security, on or before September 30, 2021.

b) DIP Financing to be fully paid out and a BC Court of Appeal 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) BC Court of Appeal 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) BC Court of Appeal 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:

17.1 Funding of the Loan is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Friday, October 8, 2021**, all to be found satisfactory to the Lender and its solicitor:

a) An executed copy of this Third Revised Commitment Letter.

8

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 $9,196,000 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. **SATISFIED**

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.

17.2 Funding of the Loan is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Friday, October 8, 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.

17.3 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 3RCL has been **SATISFIED**.

17.4 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**

$149,000.00 Third MORTGAGE BROKER FEE due on or before Aug. 6, 2021. **PENDING**

NOTE: Domain Funding has agreed to return the Third MORTGAGE BROKER FEE to the Borrower(s), in the event that, prior to Aug. 31, 2021, the BC Court of Appeal denies the Borrower(s) with leave to appeal the decision of Madam Justice Fitzpatrick pronounced on June 30, 2021 in the matter of *Port Capital Development (EV) Inc. (Re), 2021 BCSC 1272*

$147,000.00 Fund Raising Fee payable to Domain Securities Corp. due upon the earlier of (a) the funding of the Loan; or (b) Oct. 29, 2021 **PENDING**

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.
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)
Balance of Lender's Legal Fees:	$33,000.00 (estimate)

NOTE: Payouts of existing mortgages, outstanding taxes, utilities, etc. are to be deducted from mortgage proceeds and paid by the Lender'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 **Friday, October 29, 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 on or before 1:00 PM on Friday, July 30, 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.

The $149,000 Third MORTGAGE BROKER FEE is due and payable on or before Aug. 6, 2021.

If this 3RCL is not accepted by the Borrower(s) and Covenantor(s) by 1:00 PM on Friday, July 30, 2021, or if the $149,000.00 Third MORTGAGE BROKER FEE payable to Domain Funding is not received by 1:00 PM on Friday, Aug. 6, 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 30th day of July, 2021

BORROWER(S):	COVENANTOR(S):
Evergreen House Development Limited Partnership PER: Authorized Signatory	**Port Capital Development Inc.** PER: Authorized Signatory
Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership PER: Authorized Signatory	**Mr. Macario Teodoro Reyes** Mr. Macario Teodoro Reyes

Initials of Borrower(s)/Covenantor(s):

SCHEDULE "A" – STANDARD CLAUSES

(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JULY 30, 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

Initials of Borrower(s)/Covenantor(s):

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

INTENTIONALLY LEFT BLANK

Initials of Borrower(s)/Covenantor(s):

SCHEDULE "C" – BORROWER(S)' INFORMATION

(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JULY 30, 2021)

1. **BORROWER(S):**

Name: see Second Commitment Letter

Registered Records Office: ______

Telephone: ______

Fax: ______

E-Mail: ______

2. **BORROWER(S)' SOLICITOR:**

Name: "

Address: ______

Telephone: ______

Fax: ______

E-Mail: ______

3. **BORROWER(S)' INSURANCE AGENT:**

Name: "

Address: ______

Telephone: ______

Fax: ______

E-Mail: ______

Initials of Borrower(s)/Covenantor(s): ☐ ☐ ☐ ☐

SCHEDULE "D" – PERMISSIBLE SUBSEQUENT ENCUMBRANCES

Copy of Title No. CA7287055

Initials of Borrower(s)/Covenantor(s):

Court of Appeal File No. CA-47585
Supreme Court File No. S-205095
Supreme Court Registry: Vancouver

COURT OF APPEAL

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

BETWEEN:

PORT CAPITAL DEVELOPMENT (EV) INC. and
EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

Respondents
(Petitioners/Applicants)

AND:

1296371 B.C. LTD.

Appellant
(Respondent/Applicant)

AND:

CENTURA BUILDING SYSTEMS (2013) LTD. and
SOLTERRA ACQUISITIONS CORP.

Respondents
(Respondents)

MEMORANDUM OF ARGUMENT OF THE APPELLANT 1296371 B.C. LTD.

MEMORANDUM OF ARGUMENT OF THE APPELLANT 1296371 B.C. LTD.

PART I: STATEMENT OF FACTS

A. Overview

1. Pursuant to s. 13 of the *Companies' Creditors Arrangement Act*[1] (as amended, the "***CCAA***"), the appellant seeks leave to appeal the order dismissing its application to refinance the project that is the subject of these proceedings.

2. At it is core, this application turns on the issue of appropriateness, as that term has been defined in the context of s. 11 of the *CCAA* by the Supreme Court of Canada.[2]

3. In the court below, the question of appropriateness led to a comparison between a number of sale transactions and a refinancing. The chambers judge concluded a sale transaction, which crystalizes losses for all creditors, was a preferable outcome to a refinancing that pays the senior secured creditor in full, is supported by the subordinate secured creditor and preserves the prospect of recovery for the remaining creditors.

4. Viewed through the remedial objective of the *CCAA* to avoid the "social and economic losses resulting from liquidation of an insolvent company",[3] the result below is unsupportable. The chambers judge erred in fact and law in dismissing the application.

5. In reaching her decision, the chambers judge was bound by *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp*.[4] The case at bar highlights why this Court should reconsidered *Cliffs*: it compelled the result below. Further, the *CCAA* has evolved since *Cliffs*, both judicially and as a result of amendments to the *CCAA*.

B. Background

6. Port Capital Development (EV) Inc. (the "**General Partner**") and Evergreen House Development Limited Partnership ("**Evergreen LP**", and together with the General Partner, the "**Petitioners**") own a real estate development project called "**Terrace House**", located at 1250 West Hastings Street, Vancouver, BC (the "**Lands**").[5]

7. CMLS Financial Ltd. ("**CMLS**") provided construction financing for Terrace House (the "**CMLS Facility**") and holds security over all property and assets of the Petitioners for payment

[1] R.S.C. 1985, c. C-36 [*CCAA*].
[2] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 50, 70 [*Callidus*]; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.
[3] *Century Services*, *supra* note 2, at para. 70.
[4] *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327.
[5] *Port Capital Development (EV) Inc. (Re)*, 2021 BCSC 1272 at para. 6 [*Chambers Reasons*], Motion Book for Leave to Appeal of the Appellant ("**Motion Book**"), Tab 2; Sixth Report of the Monitor dated May 20, 2021 ("**Sixth Report**"), paras. 1-2, Motion Book, Tab 10.

thereof (the "**CMLS Security**"), including a mortgage of the Lands (the "**CMLS Mortgage**").[6] With the exception of the charges granted in these *CCAA* proceedings, CMLS is the senior secured creditor.

8. Aviva Insurance Company of Canada ("**Aviva**") provided a deposit protection insurance facility to the Petitioners. Aviva has second ranked security against the assets of the Petitioners (the "**Aviva Security**"), subject to the CMLS Security.[7]

9. The Petitioners also have lien claimants that are estimated to total $4.0 million and unsecured creditors that are estimated to total $2.3 million (the "**Other Creditors**").[8]

10. On May 29, 2020, the Petitioners obtained an order in these proceedings (the "**Initial Order**") granting them various relief pursuant to the *CCAA*.[9] The Initial Order was amended and restated by order dated June 8, 2020 (the "**ARIO**"),[10] and thereafter further amended at various times throughout the proceedings.

11. The Initial Order included a stay of proceedings (the "**Stay of Proceedings**") effective until June 8, 2020 and appointed Ernst & Young, Inc. as monitor (in that capacity, the "**Monitor**"). Under the Initial Order, the Monitor was granted "enhanced powers to assume control of the Petitioners and [Terrace House]."[11] The Stay of Proceedings has been extended seven times, most recently to September 30, 2021.[12]

12. The ARIO also approved certain super-priority charges, ranking in priority to the CMLS Security and the Aviva Security, to secure:

(a) the fees and expenses of the Monitor, it's counsel, and Petitioners' counsel (the "**Administration Charge**");[13] and

(b) an interim financing facility (the "**Interim Lender Facility**").[14]

13. The Monitor, with input from CMLS and Aviva, was directed to implement a sales and investment solicitation plan (the "**SISP**").[15] The SISP produced a proposed transaction that ultimately collapsed in February 2021 because it was not acceptable to CMLS.[16]

[6] Sixth Report, para. 4, Motion Book, Tab 10.
[7] *Chambers Reasons*, *supra* note 5, at para. 7; Sixth Report, para. 6, Motion Book, Tab 10.
[8] Sixth Report, para. 7, Motion Book, Tab 10.
[9] *Chambers Reasons*, *supra* note 5, at para. 12.
[10] *Ibid* at para. 13.
[11] *Ibid* at para. 12.
[12] Stay Extension and Interim Financing Increase Order dated June 11, 2021, para. 1, Motion Book, Tab 23.
[13] *Chamber Reasons*, *supra* note 5, at para. 12; Initial Order dated May 29, 2020 ("**Initial Order**"), paras. 33-35, Motion Book, Tab 3.
[14] *Chamber Reasons*, *supra* note 5, at para. 13.

14. Following the collapse of the original SISP, on March 25, 2021, Landa and the Monitor executed a purchase and sale agreement (the "**Landa Offer #1**").[17]

15. The chambers judge approved the execution of the Landa Offer #1 on April 16, 2021. The chambers judge also approved "a short period of time (15 days) to re-activate the SISP and obtain any other superior offers".[18] Under this "**Final Sales Process**", there was a new bid deadline of May 7, 2021.[19]

16. The Monitor received two offers that were both higher than the Landa Offer #1: an offer from Solterra Acquisitions Corp. ("**Solterra**") to purchase Terrace House (the "**Solterra Offer #1**"), and an offer to refinance Terrace House from 1296371 B.C. Ltd. ("**129**"), discussed below.[20]

17. The Monitor determined that the Solterra Offer #1 was the superior offer and entered a purchase and sale agreement with Solterra on May 14, 2021, subject to court approval.[21] On May 20, 2021, the Petitioners served a notice of application seeking approval of the Solterra Offer #1 on the "**Service List**" (as defined in the Initial Order).[22] The hearing to approve the Solterra Offer #1 was scheduled for May 25, 2021.[23]

18. On May 24, 2021, the Monitor provided a report outlining that Landa had submitted a revised purchase offer (the "**Landa Offer #2**").[24]

19. At the May 25, 2021 hearing, the chambers judge adjourned the matter until June 8, 2021. She indicted to the bidders that she "was not directing any further process to allow for new bids; however, if any party wished to submit further offers, those offers should be received by the Monitor by noon June 4, 2021."[25]

20. By June 4, 2021, the Monitor had received (a) a revised offer from Landa (the "**Landa Offer #3**"), (b) a "without prejudice" backup offer from Solterra (the "**Solterra Backup Offer**"), and (c) a revised offer from 129, discussed below.[26]

[15] *Ibid* at para. 12.
[16] *Ibid* at paras. 15-17.
[17] *Ibid* at para. 19.
[18] *Ibid* at paras. 22-23.
[19] *Ibid* at para. 28.
[20] *Ibid*.
[21] *Ibid* at paras. 29-30.
[22] Notice of Application of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership dated and filed May 20, 2021 ("**Petitioners Application**"), Motion Book, Tab 11.
[23] *Chambers Reasons*, *supra* note 5, at para. 30.
[24] *Ibid* at para. 34.
[25] *Ibid* at para. 37.
[26] *Ibid* at paras. 39-40.

21. Under any of the Landa or Solterra offers: (a) CMLS would suffer a shortfall; (b) the Petitioners would disclaim $16 million of pre-sale agreements; (c) Aviva would immediately crystalize its exposure, which was estimated to be $8.6 million; and (d) Aviva and the Other Creditors would be left "out of the money".[27]

C. 129 Refinancing Transaction

22. As noted above, 129 initially submitted its proposed offer to refinance Terrace House to the Monitor by the bid deadline in the Final Sales Process.[28] 129 served its notice of application (the "**129 Application**") seeking approval of its refinancing offer on the Service List.[29] However, 129's offer continued to improve. On June 4, 2021, in accordance with the process described above, 129 provided the Monitor with a revised refinancing offer (the "**129 Refinancing**").[30]

23. Although the overarching structure of the proposed transaction was unchanged, 129 was able to remove all of the substantive conditions and increase the funds available under the 129 Refinancing. As of the hearing on June 8, 2021, the 129 Refinancing would:

(a) repay the Interim Lender Facility and the Administrative Charge in full;

(b) repay the CMLS Facility in full, and assign the CLMS Security, including the CMLS Mortgage, to a company incorporated by Domain Mortgage Company ("**Domain**"), the primary source of funds for the 129 Refinancing;

(c) provide Aviva with improved security by granting Aviva priority over certain parts of the loan facility contemplated by the 129 Refinancing;

(d) pay break fees owed to Landa and Solterra; and

(e) provide working capital for the Petitioners.[31]

24. The 129 Refinancing was supported by CMLS and Aviva. While the Petitioners did not oppose the 129 Application, they were obliged to seek approval of the Solterra Offer #1.

25. The Monitor confirmed that most of the conditions relating to the 129 Refinancing were satisfied, save for customary funding conditions.[32] The Monitor reported that the 129 Refinancing

[27] *Ibid* at paras. 42, 73.
[28] *Ibid* at para. 28.
[29] Notice of Application of 1296371 B.C. Ltd. dated May 21, 2021 and filed May 25, 2021 ("**129 Application**"), Motion Book, Tab 12.
[30] *Chambers Reasons*, *supra* note 5, at para. 40.
[31] *Ibid* at paras. 45(b), 47(c).
[32] *Ibid* at para. 46.

would result in a "materially better" outcome for the stakeholders over any of the Solterra or Landa offers.[33]

26. On June 8, 2021, Centura Building Systems (2013) Ltd. ("**Centura**") and Solterra served an application response to the 129 Application on the Service List.[34] The only evidence in support of this application response was Centura's registered claim of lien against the Lands in the amount of $473,277.00.[35] Centura is related to Solterra.[36]

D. Decision of the Chambers Judge and Reasons for Judgment

27. On June 15, 2021, the chambers judge dismissed the 129 Application and approved the Solterra Backup Offer, with written reasons to follow.

28. The chambers judge delivered written reasons for judgment on June 30, 2021 (the "***Chambers Reasons***"). In deciding that the 129 Refinancing was not appropriate the chambers judge concluded, among other things:

(a) The 129 Refinancing was not a redemption of the CMLS Mortgage.[37]

(b) She was not aware that proper notice had been given to all of the secured creditors who might be affected by the 129 Refinancing.[38]

(c) That comparing the 129 Refinancing with the outcome if the Solterra or Landa offers were approved would be a "very unprincipled basis" upon which to argue the 129 Refinancing was appropriate.[39]

(d) The 129 Refinancing would not have been objectionable if it had been structured as a sale, whether via an outright sale or a reverse vesting order.[40]

(e) The circumstances of this case are similar to those in *Cliffs*.[41] Since there was no evidence of an intention to propose a plan of arrangement or compromise to creditors, the 129 Refinancing was not appropriate.[42]

[33] *Ibid* at para. 40.
[34] Application Response of Centura Building Systems (2013) Ltd. and Solterra Acquisitions Corp. dated and filed June 8, 2021, Motion Book, Tab 21.
[35] Affidavit #1 of Suzanne Volkow filed June 8, 2021, Exhibit A, Motion Book, Tab 22.
[36] *Chambers Reasons*, *supra* note 5, at para. 10.
[37] *Ibid* at para. 57.
[38] *Ibid* at para. 71.
[39] *Ibid* at para. 73.
[40] *Ibid* at para. 75.
[41] *Ibid* at para. 82.
[42] *Ibid* at paras. 91-92.

PART II: STATEMENT OF POINTS IN ISSUE

29. There are two issues to be determined on this application:

(a) Is it appropriate to grant 129 leave to appeal?

(b) If leave is granted, should the Court convene a five-justice division to hear the appeal?

30. If leave is granted, the parties consent to a stay of the chambers judge's order with respect to the Solterra Backup Offer, pending the outcome of the appeal.

PART III: STATEMENT OF ARGUMENT

A. Granting Leave is Appropriate

31. 129 seeks leave to appeal pursuant to s. 13 of the *CCAA*. The factors to consider on such an application are:

(a) Whether the appeal is *prima facie* meritorious or whether it is frivolous;

(b) Whether the point on appeal is of significance to the practice;

(c) Whether the point raised is of significance to the parties; and

(d) Whether the appeal will unduly hinder the progress of the action.[43]

32. The "overriding consideration is whether it is in the interests of justice to grant leave".[44] Although the discretion to grant leave to appeal in *CCAA* proceedings is exercised sparingly,[45] leave to appeal ought to be granted if the supervising *CCAA* judge exercised their discretion "on a wrong principle".[46]

I. <u>Grounds of Appeal</u>

33. The appellant submits the chambers judge erred:

(a) in fact and law by concluding the 129 Refinancing was not a redemption;

(b) in fact and law in determining that it was not appropriate to grant the 129 Application because there was no evidence of an intention to propose a plan of arrangement or compromise to creditors, despite the application being on notice to all creditors and supported by the two senior secured creditors; and

[43] *North American Tungsten Corporation Ltd. v. Global Tungsten and Powders Corp.*, 2015 BCCA 390 at para. 9; *Edgewater Casino Inc. (Re)*, 2009 BCCA 40 at para. 17; *Southern Star Developments Ltd. v. Quest University Canada*, 2020 BCCA 364 at para. 22.
[44] *North American Tungsten*, *supra* note 43, at para. 9.
[45] *North American Tungsten*, *supra* note 43, at para. 9; *Edgewater Casino*, *supra* note 43, at paras. 13, 18; *Southern Star*, *supra* note 43, at para. 25.
[46] *Southern Star*, *supra* note 43, at para. 24.

(c) in law in approving the Solterra Backup Offer in the face of the 129 Refinancing which clearly results in a better outcome for all stakeholders and is consistent with the remedial purposes of the *CCAA*.

II. Appeal is Meritorious

34. When the question on appeal is properly characterized as an error of law, rather than discretion, this Court ought to focus on the standard threshold on a merits analysis, that being that the point raised is "not frivolous".[47] The appellant meets this threshold for all three grounds of appeal.

1. The 129 Refinancing was a redemption

35. The chambers judge erred in concluding the 129 Refinancing was not a redemption of the CMLS Mortgage.[48] The equity of redemption was engaged on the facts of this case irrespective of which party it favoured (the Petitioners or Aviva).

36. The 129 Refinancing was paying the entire indebtedness owed to CMLS, which constitutes a redemption. Aviva provided its consent to the 129 Refinancing. It should not have mattered whether the funds were coming from Aviva directly, or from another party, such as 129. The point should been that Aviva, "through whatever means [e.g. by consent], is ready willing and able to pay out the entirety of the [CMLS] debt."[49]

37. The chambers judge did not consider the equity of redemption broadly. Instead, she narrowly focused her analysis on the Petitioners, stating the Petitioners could not redeem the CMLS Mortgage because a second mortgage had been granted to Aviva.[50]

38. The equity of redemption is a mortgagor's, or in the case of subsequent mortgage their transferee's, right to repay the entire debt secured by the mortgage and have the mortgaged lands reconveyed.[51] As holder of the equity of redemption, Aviva had the right to redeem the CMLS Mortgage. Although that was not being proposed directly, Aviva's consent to the 129 Refinancing should have had the same effect.

39. *Classic Mortgage Corporation v. 0768723 B.C. Ltd.*, cited by the chambers judge, stands for the principal that a mortgagor cannot compel an assignment of a mortgage under s. 14(1) of the *Law and Equity Act* when the equity of redemption rests with a second mortgagee, unless the

[47] *Edgewater Casino*, *supra* note 43, at paras. 25, 29(3), 30.
[48] *Chamber Reasons*, *supra* note 5, at para. 57.
[49] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 3659 at para. 19.
[50] *Chambers Reasons*, *supra* note 5, at para. 56.
[51] Walter M. Traub, ed., *Falconbridge on Mortgages*, 5th ed., (Toronto, Ont.: Thomson Reuters, 2021) (loose-leaf updated 2021, release no. 1), ch. 29 at §29:1; *B.C. Land & Investment Agency v. Robinson*, [1923] 4 D.L.R. 416 at 421 (B.C.C.A.), 1923 CanLII 378.

second mortgagee consents.[52] Given Aviva's consent, the Petitioners also had a right to compel an assignment of the CMLS Mortgage.

40. The 129 Application was not relying on s. 14(1) to compel an assignment because CMLS was consenting to an assignment of its security. However, 129 submits that the right of assignment, along with Aviva's right to redeem, are legal principles that were both engaged on the facts of the 129 Application and support the 129 Refinancing.

41. A court should not lightly put aside the equity of redemption. At the very least, the chambers judge ought to have balanced Aviva's right to redeem and the Petitioners' right to compel an assignment as part of her appropriateness analysis.[53] Had the chambers judge correctly determined that the 129 Refinancing was a redemption, the appropriateness analysis would have been significantly different. The chambers judge's failure to consider the equity of redemption was an error of law.

42. As a practical matter, it is worth noting that the secured creditors and 129, being sophisticated parties most directly affected, advised by counsel, collaborated in structuring a transaction which resulted in the best outcome for the stakeholders. Surely the appropriateness analysis should take into account the commercial realities and wishes of the parties involved. It is extremely unusual when approving a transaction in *CCAA* proceedings for a court to ignore the positions of the senior secured creditors.

2. <u>The 129 Refinancing was appropriate</u>

43. The chambers judge erred in principle in reaching the conclusion that the 129 Refinancing was not appropriate.[54] She failed to consider all of the circumstances and focused her analysis on only one issue: the lack of evidence of an intention to propose a plan of arrangement or compromise to creditors.[55]

44. The chambers judge's analysis is premised on the basis that *Cliffs* stands for the broad principle that a debtor must provide evidence of their intention to propose a plan of arrangement to creditors in order to obtain relief under the *CCAA*.[56] The appellant sets out below the reasons that this Court should convene a five-justice division to reconsider *Cliffs*. The argument to overrule *Cliffs* clearly has merit.

[52] *Classic Mortgage Corporation v. 0768723 B.C. Ltd.*, 2017 BCSC 1100 at para. 16, 29-31, aff'd 2017 BCSC 1225 at para. 43.
[53] See *BCIMC Construction*, *supra* note 49, at paras. 38-41, citing *Petranik v. Dale*, [1977] 2 S.C.R. 959 at 969, Laskin C.J., 995, Dickson J., among other authorities.
[54] *Chambers Reasons*, *supra* note 5, at para. 92.
[55] See *ibid* at paras. 78-92.
[56] *Ibid* at paras. 82-84.

45. However, if this Court determines that *Cliffs* does not stand for that broad proposition and it is not necessary to convene a five-justice division, this ground of appeal still has merit because the chambers judge erred in her interpretation of *Cliffs*. As a result, she failed to consider other countervailing factors in her appropriateness analysis, including Aviva's right to redeem and the Petitioner's right to compel an assignment of the CMLS Mortgage.[57]

46. The chambers judge's conclusion that the 129 Refinancing was not appropriate is coupled with her determination that approving a reverse vesting structure for the Solterra Backup Offer was appropriate.[58] It is clear that the chambers judge was of the view that a sale transaction was the only appropriate outcome in this case. She was of that view even as it related to the 129 Application: "Mr. Reyes could have used 129 as a corporate vehicle to purchase [Terrace House] — just as Landa and Solterra wish to do — via an outright sale or a RVO structure." If that had occurred, the chambers judge suggested no one "would quarrel with the structure of the transaction."[59]

47. The chambers judge's analysis led her to the conclusion that a sale transaction, which crystalizes losses for all creditors (including CMLS), is a preferable outcome to a transaction that pays out CMLS in full, has the support of all key stakeholders, and preserves the prospect of recovery for the remaining creditors.

48. A supervising judge's exercise of discretion under s. 11 of the *CCAA* "must further the remedial objectives of the *CCAA* and be guided by the baseline considerations of appropriateness, good faith, and due diligence."[60] The chambers judge erred in principle by failing to address these fundamental considerations on the following issues.

49. First, the remedial objectives of the *CCAA* are broader than articulated in *Cliffs*. Although the *CCAA* has an array of objectives, the act "generally prioritizes 'avoiding the social and economic losses resulting from liquidation of an insolvent company'".[61]

50. Second, although the chambers judge questioned the motives of 129 and Mr. Reyes personally, no party suggested that 129 was not acting in good faith or that the 129 Application was not being advanced with due diligence.

51. Third, both CMLS and Aviva, the senior secured creditors supported the 129 Refinancing. The chambers judge made no mention of this support in her appropriateness analysis. "Courts

[57] See above, paras. 35-42.
[58] *Chambers Reasons*, *supra* note 5, at para. 113.
[59] *Ibid* at paras. 75-76.
[60] *Callidus*, *supra* note 2, para. 70.
[61] *Ibid* at para. 41; *Century Services*, *supra* note 2, at paras. 15, 70.

should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit."[62] Central to *Cliffs* was the fact that the secured creditors opposed the application. [63] Here, the chambers judge erred is principle in not giving due regard to the support of CMLS and Aviva. The 129 Application found common ground amongst the stakeholders and the transaction was advantageous and fair to all.[64]

52. The Monitor stated that the 129 Refinancing would result in a "materially better" outcome for all stakeholders over all of the sale transactions before the Court.[65] Again, the chambers judge's analysis on appropriateness did not consider this fact. The "Monitor is uniquely situated to comment on the overall circumstances so as to assist the Court in the balancing exercise."[66]

53. Finally, the chambers judge erred in fact when she stated that she was "not aware that proper notice has been given to all of the secured creditors who might be affected by the proposed transaction."[67] Proper notice was given because the 129 Application was served on the Service List, pursuant to the Initial Order.[68] This was also true of the Petitioners' notice of application.[69]

54. The chambers judge went further, stating: "Without notice and the opportunity to make submissions, it is difficult to properly assess whether any creditor would be materially prejudiced" by the 129 Refinancing.[70] Although the chambers judge considered the issue of notice in the context of s. 11.2 of the *CCAA*, her comments clearly applied to her appropriateness analysis under s. 11.[71]

55. Even if there was an issue with notice, the chambers judge's concerns should have equally applied to her analysis under s. 36 with respect to the sale transactions. The chambers judge should have been concerned with, among other things, "the extent to which the creditors were consulted" and "the effects of the proposed sale or disposition on the creditors and other interested parties".[72] The chambers judge's concerns should have made it equally "difficult to properly

[62] *Century Services*, *supra* note 2, at para. 70.
[63] *Cliffs*, *supra* note 4, at para. 9.
[64] *Century Services*, *supra* note 2, at para. 70.
[65] *Chambers Reasons*, *supra* note 5, at para. 40;
[66] *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para. 49; see also *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 at para. 109.
[67] *Chambers Reasons*, *supra* note 5, at para. 71.
[68] 129 Application, Motion Book, Tab 12; Initial Order, paras. 41-45, Motion Book, Tab 3; Amended and Restated Initial Order dated June 8 2020, paras. 49-53, Motion Book, Tab 4.
[69] Petitioners Application, Motion Book, Tab 11.
[70] *Chamber Reasons*, *supra* note 5, at para. 71.
[71] See *ibid* at para. 73.
[72] *CCAA*, *supra* note 1, ss. 36(3)(d), (e).

assess" or balance under s. 36 of the *CCAA*, as under s. 11. There is no reason in fact or law for this distinction, nor does the chambers judge explain why she made that distinction.

56. It was unfair, and an error of fact, for the chambers judge to question notice of the 129 Application, while accepting there was proper notice with respect the Petitioners' application. The chambers judge inappropriately weighed lack of attendance at the hearing, or notice if that had been the case, against 129.

3. <u>The chambers judge should have compared the options</u>

57. Two bidders had submitted offers to purchase Terrace House on substantially the same terms. These bidders presented the same outcome for all creditors, with the exception of CMLS; its recovery improved depending on what purchase price was approved. All of the other creditors would be left "out of the money".[73]

58. In contrast, the 129 Refinancing presented a different option. It left all the creditors with some hope of financial recovery, while also providing CMLS full recovery, which was also better than any alternative. Aviva, being a sophisticated party with the largest stake behind CMLS, supported the 129 Refinancing.

59. Despite this reality, the chambers judge concluded comparing these alternative transactions was a "very unprincipled basis" on which to argue the 129 Refinancing was "an 'appropriate' outcome in the balancing exercise with regard to all stakeholders."[74]

60. This conclusion is directly at odds with the overarching remedial objectives of the *CCAA*, and fails to balance the "costs and benefits of restructuring or liquidating the company".[75] Comparing the options favours the 129 Refinancing and clearly answers the question of "whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company."[76]

61. The chambers judge erred in principle by not balancing the options available in determining whether the 129 Refinancing was appropriate.

III. <u>Appeal is Significant to the Practice</u>

62. This appeal raises two legal questions that are of significance to insolvency practice in British Columbia. First, how should the equity of redemption be factored into an analysis under the

[73] *Chambers Reasons*, supra note 5, at paras. 71, 73.
[74] *Ibid* at para. 73.
[75] *Callidus*, *supra* note 2, at para. 40.
[76] *Century Services*, *supra* note 2, at para. 70.

CCAA when faced with competing transactions. Second, whether an intention to propose a plan of arrangement or compromise to creditors is a necessary precondition to relief under the *CCAA*.

63. The importance of the equity of redemption as a core principle of real estate law is canvassed above.[77] Whether the equity of redemption ought to be balanced as part of an appropriateness analysis under s. 11 of the *CCAA* is significant to the practice as it is common for mortgages to be the primary security held by secured creditors.

64. *Cliffs* is cited frequently, and often distinguished, with respect to the issue of a debtor's intention to propose a plan of arrangement or compromise to creditors. Whether or not such an intention is a necessary precondition for relief under the *CCAA* is clearly significant to the practice.

IV. <u>Appeal is Significant to the Parties</u>

65. It is obvious the appeal is significant to the parties. On the one hand, Solterra is currently the approved purchaser of Terrace House. On the other hand, 129 seeks to refinance Terrace House and proceed with the project for the benefit of all creditors.

V. <u>Appeal will not Hinder the Action</u>

66. This appeal will not unduly hinder the progress of the underlying *CCAA* proceedings. The parties have agreed to hear the appeal, if leave is granted, on an expedited basis, with a date secured for hearing the appeal on September 21, 2021. Both transactions will remain available beyond that date.

67. Under the Solterra Backup Offer, the parties are bound by the agreement until September 30, 2021.[78] 129 has provided an assurance that the 129 Refinancing will be available provided a decision on the appeal is rendered by September 30, 2021.[79]

68. As a result, the delay caused by granting leave to appeal will not jeopardize the efforts made in these *CCAA* proceedings. Nor would an appeal upset the balance between competing stakeholders.[80]

VI. <u>Conclusion</u>

69. As a result, it is the interests of justice to grant 129 leave to appeal.

B. The Court Should Reconsider *Cliffs*

70. A five-justice division may overrule *Cliffs* if the decision is wrong or, "for any other reason" the decision ought to be overruled. A three-justice division does not have the same authority.[81]

[77] See paras. 35-42; See also *BCIMC Construction*, *supra* note 49, at paras. 38-41.
[78] Schedule B to Approval and Vesting Order dated June 15, 2021, Purchase and Sale Agreement dated June 4, 2021, Article 1.1(l) "Closing Date", Article 9.11, Motion Book, Tab 24(a).
[79] Affidavit #5 of Macario Teodoro Reyes, para. 3, Exhibit A, Motion Book, Tab 25.
[80] *Edgewater Casino*, *supra* note 43, at para. 22.

71. An argument to overrule a previous decision of this Court must have "sufficient merit" and the issue must be of "sufficient importance" for the appeal to be referred to a five-justice division.[82] An applicant must "satisfy the [three-panel] division that there is good reason for the Court to reconsider one of its prior decisions."[83]

72. *Cliffs* states it is "not appropriate" for a stay to be granted or extended in the absence of an intention to propose a plan of arrangement or compromise to creditors.[84]

73. The case at bar is a perfect example of why *Cliffs* ought to be reconsidered. The chamber judge concluded that the 129 Refinancing could have been approved if it was a sale, even without an intention to propose a plan of arrangement or compromise to creditors, but that she could not approved the 129 Refinancing in its current form, despite 129's stated intention to potentially pay creditors in full and support from the senior secured creditors.[85]

74. The *Chambers Reasons* make it clear the chambers judge believed she was bound by the outcome in *Cliffs*. This led the chambers judge to conclude that a sale transaction, which results in loss for all creditors, was a more appropriate outcome than a transaction that pays out the primary creditors in full, and preserves the prospect for some recovery for other creditors, merely because there was a lack of evidence with respect to an intention to propose a plan of arrangement or compromise to creditors.

75. *Cliffs* ought to be reconsidered by a five-justice division for four reasons.

I. <u>The Purpose of the CCAA is Broad</u>

76. *Cliffs* is premised on the conclusion that the fundamental purpose of the *CCAA* is as expressed in the act's long title: "to facilitate compromises and arrangements between companies and their creditors".[86]

77. However, more recent authority of the Supreme Court of Canada articulates a broader purpose of the *CCAA*, which is consistent with the expanded authority introduced by Parliament in 2009.

78. The purpose of the *CCAA* "is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets."[87]

[81] *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.), 1995 CanLII 1537 at para. 12.
[82] *Ibid* at para. 13.
[83] *Sangha v. Reliance Investment Group Ltd.*, 2010 BCCA 340 at para. 25.
[84] *Cliffs*, *supra* note 4, paras. 31, 35, 38.
[85] *Chambers Reasons*, *supra* note 5, at paras. 75-77.
[86] *Cliffs*, *supra* note 4, at para. 27.
[87] *Century Services*, *supra* note 2, at para. 15.

79. Further, *Cliffs* creates a mandatory precondition in *CCAA* proceedings that is inconsistent with subsequent authority of this Court which points out that if it is possible in *CCAA* proceedings "to arrange a refinancing in respect of which creditors need not compromise their rights, so much the better."[88] The application of *Cliffs* by the chambers judge prevented this potential outcome.

II. Current CCAA Practices

80. The broader purpose articulated in *Century Services*, which is not focused solely on plans of arrangement or compromise, aligns with relief that is frequently sought and granted under the *CCAA* without a creditor vote, or an intention to propose a plan.

81. The best example of this are proceedings commonly referred to as "liquidating *CCAA*s". These are now approved pursuant to s. 36 of the *CCAA*, which raises, as a factor to consider, "the extent to which the creditors were consulted". However, there is no requirement that a plan of arrangement or compromise be filed.[89]

82. Liquidating *CCAA*s are accepted as having "a legitimate place in the *CCAA* regime" and "different considerations" may come in play.[90]

83. These *CCAA* proceedings also present a good example of why *Cliffs* does not comport with current *CCAA* practices. The 129 Application came almost a year after the Initial Order. During that time there had been no plan of arrangement proposed to the creditors, nor was there any evidence of an intention of the Monitor (acting on behalf of Petitioners, under its expanded powers) to do so. Despite that, the chambers judge granted four orders extending the stay to facilitate the SISP, which sought to solicit potential sales or refinancing transactions, and two further orders extending the stay to facilitate the Final Sales Process. It was only when 129 sought to refinance Terrace House that *Cliffs* became an issue.

III. Unwarranted Inference with Broad Discretion

84. In *Cliffs*, the Court concluded, "in the absence of [an intention to propose an arrangement or compromise], it was not appropriate for a stay to have been granted or extended under s. 11 of the *CCAA*."[91] *Cliffs* articulates a debtor's intention to propose a plan to creditors as a mandatory precondition for relief under s. 11 of the *CCAA*.

85. Such a mandatory requirement interferes with the "flexible mechanism" that is the *CCAA*.[92] The "exercise of this discretion must further the remedial objectives of the *CCAA* and be guided by

[88] *Asset Engineering LP v. Forest & Marine Financial Limited Partnership*, 2009 BCCA 319 at para. 26.
[89] *Ibid*.
[90] *Canada v. Canada North Group Inc.*, 2021 SCC 30 at para. 73, Côté J [*Canada North*].
[91] *Cliffs*, *supra* note 4, at para. 35.
[92] *Callidus*, *supra* note 3, at para. 73, citing *Century Services*, *supra* note 3, para. 14.

the baseline considerations of appropriateness, good faith, and due diligence."[93] The mandatory rule in *Cliffs*, as was applied by the chambers judge, casts the question of appropriateness too narrowly.

86. Appropriateness is not determined by the presence or absence of an intention to propose a plan of compromise or arrangement. "The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company."[94]

87. In *Callidus*, the Supreme Court of Canada concluded s. 11 provides a court the discretion to bar a creditor from voting on a plan of arrangement.[95] This conclusion is also practically inconsistent with *Cliffs*. If s. 11 can prevent a creditor from voting, it follows that an intention to have a vote is also not necessary.

88. *Cliffs* is too rigid. It fetters a court discretion under s. 11, which is "key in allowing the *CCAA* to adapt and evolve to meet contemporary business and social needs."[96]

IV. <u>Artificial Evidentiary Hurdle</u>

89. As stated in *Winnipeg Motor Express*:

> It also seems to me that a formal plan of arrangement or compromise is, at least theoretically, always a possibility, so to require a debtor company to utter some magic incantation that it intends to propose a plan of arrangement, as a prerequisite for relief under the CCAA, is overly technical and inconsistent with this remedial objective. The result of such a conclusion may simply be that applicants would make a statement in some pro forma or boiler plate language, or go through an exercise for no valid purpose.[97]

90. This statement is particularly true in this context. The 129 Application was not being advanced by the Petitioners, and the Petitioners had not, to date, expressed an intention to propose a plan of arrangement to creditors. 129 was not in a position to provide the Court with admissible evidence with respect to the Petitioners' intentions. Without control of Terrace House, it was not possible for Mr. Reyes or 129 to advance all the aspects of a long-term restructuring.[98]

V. <u>Conclusion</u>

91. The issue in *Cliffs* is sufficiently important to this appeal and to insolvency practice in general. The question of whether or not an intention to propose a plan of arrangement or

[93] *Callidus*, *supra* note 3, at para. 70.
[94] *Century Services*, *supra* note 3, at para. 70.
[95] *Callidus*, *supra* note 3, at paras. 65-76.
[96] *Canada North*, *supra* note 90, at para. 138, Karakatsanis J.
[97] *Winnipeg Motor Express Inc. et al.*, 2008 MBQB 297 at para. 42.
[98] Affidavit #2 of Macario Teodoro Reyes filed May 25, 2021, paras. 16-19, Motion Book, Tab 13.

compromise to creditors is a requirement is an important issue generally, and was dispositive in the case at bar.

92. The argument that *Cliffs* should be overturned has sufficient merit. The decision does not align with more recent Supreme Court of Canada jurisprudence. *CCAA* practices have evolved since the decision was rendered, both generally and as a result of subsequent amendments made to the *CCAA*.

93. There is good reason to convene a five-panel division to reconsider *Cliffs*.

C. If Leave is Granted, a Stay is Appropriate

94. If this Court grants leave to appeal the order dismissing the 129 Application, the parties consent to stay of the chambers judge's order with respect to the Solterra Backup Offer, pending the outcome of the appeal.

PART IV: STATEMENT OF ORDERS SOUGHT

95. 129 requests an order granting:

(a) leave to appeal the order dismissing the 129 Application;

(b) the appellant's request to convene a five-justice division to hear the appeal; and

(c) a stay of the chambers judge's order with respect to the Solterra Backup Offer, pending the outcome of the appeal.

All of which is respectively submitted this 30th day of July, 2021.

John Sandrelli, Jordan Schultz and Eamonn Watson
Counsel for the Appellant, 1296371 B.C. Ltd.

PART V: TABLE OF AUTHORITIES

17.	*Southern Star Developments Ltd. v. Quest University Canada*, 2020 BCCA 364.	31, 32
18.	*Winnipeg Motor Express Inc. et al.*, 2008 MBQB 297.	89
STATUTES		
19.	*Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, ss. 11, 13, 36.	1, 2, 31, 48, 54, 55, 63, 84, 87, 88
20.	*Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 14(1).	39, 40
SECONDARY SOURCES		
21.	Walter M. Traub, ed., *Falconbridge on Mortgages*, 5th ed., (Toronto, Ont.: Thomson Reuters, 2021) (loose-leaf updated 2021, release no. 1), ch. 29 at §29:1.	38