Form 9 (Rule 19(a))

Court of Appeal File No. CA-47585

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)

APPEAL RECORD

1296371 B.C. Ltd.
Appellant:

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and Solterra Acquisitions Corp.
Respondents:

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Part 3 - JUDGMENT or DECISION

Part 4 - NOTICE OF APPLICATION FOR LEAVE TO APPEAL and ORDER

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

NOTICE OF APPLICATION

Names of applicants: Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership

To: The Service List

TAKE NOTICE that an application will be made by the applicants to Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street Vancouver BC V6Z 2E1 on May 25, 2021 at 10:00 a.m. by MS Teams, for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order substantially in the form attached as **Schedule A** hereto, providing for the following relief:

   (a) Abridging the time for service of this notice of application, to the extent necessary;

   (b) Granting an extension of the stay of proceedings to and including September 30, 2021; and

(c) Approving an increase to the credit facility provided by Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") from $1,500,000 to $1,800,000.

2. An Order substantially in the form attached as **Schedule B** hereto, providing for the following relief:

(a) Granting of a sealing order with respect to the confidential supplement to the Monitor's Sixth Report.

3. An Order substantially in the form attached as **Schedule C** hereto, providing for the following relief:

(a) Approving the Purchase and Sale Agreement entered into on May 13, 2021 (the "**PSA**") between Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership as vendors (the "**Vendor**") and Solterra Acquisition Corp. (the "**Purchaser**" or "**Solterra**");

(b) Authorizing the Monitor to incorporate a new subsidiary of Port Capital Development (EV) Inc. ("**Residual Co**") who will be a party to which the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended ("**CCAA**") applies;

(c) Ordering and declaring that upon the filing of the Monitor's Certificate attached to the proposed form of Reverse Vesting Order, that all of the Excluded Assets (as defined in the PSA) shall be transferred and vested absolutely in the name of Residual Co.

4. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioners, Evergreen House Development Limited Partnership and its general partner, Port Capital Development (EV) Inc., own the **"Terrace House Project"**. The Terrace

House Project consists of an ongoing development of a high-rise luxury residential strata development in the Coal Harbour neighbourhood, located at 1250 W Hastings St., Vancouver.

2. On May 29, 2020, the Petitioners obtained an order in these proceedings (the "**Initial Order**") granting them various relief pursuant to CCAA.

3. Among other things, the Initial Order established a stay of proceedings (the "**Stay of Proceedings**") effective until June 8, 2020 and appointed Ernst & Young, Inc. as monitor (the "**Monitor**") in these proceedings with enhanced powers to execute control over the Petitioners, explore restructuring opportunities and administer a "dual-track" sale and investment solicitation process to obtain an equity investment, a refinancing or alternatively a sale of the Terrace House Property (the "**SISP**").

4. On June 8, 2020, the Petitioners obtained an amended and restated initial order (the "**ARIO**") in these proceedings that, among other things:

(a) extended the Stay of Proceedings to and including September 3, 2020;

(b) approved an interim financing facility (the "**DIP Facility**") with the Interim Lender.

5. On December 1, 2020, this Honourable Court granted an extension of the stay of proceedings and a Bid Offer Agreement with respect to the Terrace House Project.

6. On February 24, 2021, this Honourable Court granted a further extension of the stay of proceedings up to and including May 4, 2021 and also authorized an increase to the DIP Facility. As part of the February 24, 2021 application, the Court was advised that the Bid Offer Agreement would not be proceeding.

7. On April 16, 2021, this Honourable Court granted a further extension of the stay of proceeding to June 11, 2021 and approved the Monitor entering into a purchase and sale agreement (the "**Landa PSA**") with Landa Global Acquisitions Ltd. ("**Landa**") which provided for the opportunity for third parties to submit competing bids.

Activities since the last stay extension

8. Since the date of the last stay extension, the Monitor has, among other things, with the cooperation of the Petitioners:

a) managed the site preservation of the Terrace House Project;

b) managed the cash flows of the Petitioners; and

c) conducted a competitive process for competitive bids to that which was provided by Landa and entered into the PSA with Solterra.

Necessity for Stay Extension

9. The Petitioners seek an extension of the Stay of Proceedings to and including September 30, 2021, to provide the Monitor with additional time to complete the transaction pursuant to the PSA.

10. The extension of the Stay of Proceedings will allow the Monitor and Petitioners to maintain operational control and to preserve the Terrace House Project. The stay is also consistent with the anticipated closing period set out in the PSA with Solterra and should the DIP Facility increase be granted, the Petitioners will have sufficient cash flow during this period.

11. The Petitioners have acted and continue to act in these proceedings in good faith and with due diligence.

Necessity for an Increase in the DIP Facility

12. As set out in the Sixth Report of the Monitor, the Cash Flow Forecast prepared by the Monitor projects that the authorized borrowings under the DIP Facility are insufficient to pay obligations anticipated to arise over the proposed extension of the Stay of Proceedings.

13. Granting the increase to the DIP Facility will provide the Petitioners with the necessary time to work towards completing a transaction, and enhance a viable arrangement.

14. The benefits of increasing the facility outweigh the potential prejudice to creditors.

Proposed Transaction

15. As this court is aware, no successful transaction resulted from the Court Approved Sales process ("**SISP**"). As such, the Monitor negotiated and obtained court approval to enter into the Landa PSA, The Landa PSA provided for a two-step process, the second step included 15 business days during which competitive proposals could be submitted. If there were no competitive proposals received that were deemed superior to the Landa PSA, the Court would then be asked to grant an approval and vesting order in favour of Landa.

16. Solterra was one of two parties that submitted a proposal during the 15 day period. The Monitor determined that the Solterra proposal was superior to the Landa PSA as it was unconditional and supported by CMLS. Similar to the Landa PSA, the PSA provides for, a Reverse Vesting Order to facilitate a share transaction, vesting to a newly incorporated subsidiary of Port Capital Development (EV) Inc., the Excluded Assets, as defined in the PSA.

17. Proceeding by way of a Reverse Vesting Order is the preferred approach as it will result in the greatest recovery by the estate. In the case of an asset sale, the PSA provides for the purchase price to be reduced by the amount of property transfer tax payable by the Purchaser in connection with the transfer.

Sealing Order

18. The Confidential Supplement to the Sixth Report contains the PSA and copies of the two proposals that were submitted as part of the competitive proposal following Court approval of the Landa PSA. The Confidential Supplement in sought to maintain confidentiality respecting confidential commercial terms in order to maintain the integrity of the SISP.

Part 3: LEGAL BASIS

1. The Petitioners rely on the CCAA, the Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court.

Stay Extension

2. Pursuant to s. 11.02(3) of the CCAA, the Court may extend the stay of proceedings for any period that the Court considers necessary provided that:

(a) the extension sought is appropriate in the circumstances; and

(b) the Petitioners have acted and are acting in good faith and with due diligence.

3. Since the Initial Order was pronounced on May 29, 2020, the Petitioners have acted and continue to act and operate in good faith and with due diligence.

4. The extension of the stay of proceedings is necessary to allow the Monitor to take steps to complete the transaction pursuant to the PSA, and for the Petitioners and Monitor to maintain operational control and preserve the Terrace House Project.

5. Having regard to all the circumstances and the conditions outlined in s. 11.02(3) of the CCAA, the extension of the Stay of Proceedings to and including September 30, 2021 is reasonable and appropriate.

Interim Financing Increase

6. Pursuant to section 11.2(1) of the CCAA, on notice to secured creditors likely to be affected by the charge, the court may order that all or part of the property of the Petitioners be subject to a charge, in an amount the court considers appropriate, in favour of a person who agrees to lend to the debtor company an amount approved by the court.

7. The Court exercised this jurisdiction in granting the Interim Lender's Charge in the first instance. This authority combined with the Court's inherent jurisdiction pursuant to section 11 of the CCAA provides the Court with the ability to approve an increase.

8. Permitting an increase to the credit facility is necessary and appropriate in the circumstances.

Approval of the Transaction Including Reverse Vesting Order

9. Section 36(1) of the CCAA provides jurisdiction to the Court to authorize the sale of a debtor company's assets out of the ordinary course of business. Section 36(3) sets out a non-exhaustive list of factors that courts are to consider in determining whether to approve a sale:

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

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

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

(d) the extent to which creditors were consulted;

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

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

10. Courts applying section 36 of the CCAA have cited a number of factors that may be considered, but the essential role of the Court is to "look at the transaction as a whole and essential decide whether or not the sale is appropriate, fair and reasonable."

11. The Court's decision in *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 ("**Soundair**") inform the Court's analysis under section 36 of the CCAA through the Soundair Factors which consider:

(a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers were obtained; and

(d) whether there has been unfairness in working out the process.

12. Both the section 36 and Soundair factors favour the granting of the vesting order being sought as:

(a) The process leading up to the Transaction has been the subject of approvals by the Court and overseen by the Monitor;

(b) The Monitor is supportive of the transaction;

(c) The entering into of the PSA with Solterra by the Monitor was supported by the mortgage lenders and the DIP Lender;

(d) This transaction is in the best interest of the stakeholders as it represents the best option for fulfilling the goals of restructuring;

(e) The transaction is supported by CMLS;

(f) There has been no unfairness in the working out of the process;

(g) The transaction results from extensive efforts to obtain the best price for the assets

13. This Court in *Quest University Canada (Re),* 2020 BCSC 1883 ("**Quest**"),[1] has recognized that sections 11 and 36 of the CCAA provide for the jurisdiction to grant reverse vesting orders.

14. In Quest, the Court noted that Courts have recognized reverse vesting orders as an innovative solution to challenges in a proceeding and that in exercising the Court's discretion in this regard, the Court should consider (1) whether the order sought is appropriate in the circumstances, (2) whether the applicant has been acting in good faith; and (3) with due diligence.[2]

15. The Petitioners have been acting in good faith and with due diligence throughout these proceedings. A reverse vesting order is appropriate in this instance as it represents the best

[1] *Quest University Canada (Re),* 2020 BCSC 1883 ("**Quest**") at paras. 127 and 128
[2] *Quest, supra* at paras.153-155

opportunity to realize value for the Petitioners stakeholders and the alternative would be a greater shortfall for the secured creditors, to the prejudice of all stakeholders. Further, a reverse vesting order will enable Solterra to preserve a number of key agreements including a "Building Permit" issued by the City of Vancouver and other agreements in order to carry on and complete construction of the Terrace House Projects.

Adding Residual Co. As a Petitioner

16. The Monitor is seeking authorization to incorporate a subsidiary of Port Capital Development (EV) Inc. for the purpose of facilitating the reverse vesting order contemplated by the PSA.

17. Section 3 of the CCAA provides the Court with authority with respect to both debtor companies and their affiliates. Courts have in other matters have authorized the addition of an entity to the CCAA proceedings for enabling a transaction involving a reverse vesting order.

Sealing Order

18. In the leading case of *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, the Supreme Court of Canada held that a sealing order may be granted where (1) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.[3]

19. Sealing orders in CCAA proceedings are routinely granted in order to prevent the disclosure of confidential and commercially sensitive information regarding the market value of the assets. Public disclosure would be prejudicial in the event the proposed transaction does not close. The sealing order sought is the least restrictive means possible to prevent disclosure of the confidential and commercially sensitive information in the Confidential Supplement.

[3] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53

MATERIAL TO BE RELIED ON

20. At the hearing of this Application, the Petitioners will rely on:

(a) The Sixth Report of the Monitor to be filed; and

(b) Such further material as counsel may advise and the Court may permit.

The applicants estimate that the application will take 45 minutes.

☒ This matter is not within the jurisdiction of a master. Madam Justice Fitzpatrick is seized of this proceeding.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of ~~application or, if this application is brought under Rule 9-7, within 8 business days after service of~~ this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: May 20, 2021

Signature of David E. Gruber
Lawyer for the Applicants

THIS NOTICE OF APPLICATION is prepared and delivered by David E. Gruber of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the applicants, File No. 090034.00001, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [gruberd@bennettjones.com]

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ____________ of Part 1 of this notice of application

☐ with the following variations and additional terms:

Dated: ______________________________

____
Signature of ☐ Judge ☐ Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

☐ discovery: comply with demand for documents

☐ discovery: production of additional documents

☐ other matters concerning document discovery

☐ extend oral discovery

☐ other matter concerning oral discovery

☐ amend pleadings

☐ add/change parties

☐ summary judgment

☐ summary trial

☐ service

☐ mediation

☐ adjournments

☐ proceedings at trial

☐ case plan orders: amend

☒ case plan orders: other

☐ experts

Schedule A

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
(Stay Extension Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	25/May/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 25th day of May 2021; AND ON HEARING David Gruber, counsel for the Petitioners and those other counsel and parties listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Sixth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed ("**Sixth Report**") and the Confidential Supplement to the Sixth Report; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

STAY EXTENSION

1. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Orders of this

Court pronounced February 24, 2021 and April 16, 2021, is hereby continued and extended to and including September 30, 2021.

INCREASE OF INTERIM LENDING

2. The Petitioners are hereby authorized and empowered to enter into an amended and restated credit facility on substantially the same terms and conditions set forth in commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, provided that the cumulative borrowings under the Interim Facility as amended shall not exceed the principal amount of $1,800,000 unless permitted by further order of this court.

3. The Interim Lender shall be entitled to the benefits of the Interim Lender's Charge as defined in the ARIO with respect to the additional borrowing under the amended and restated credit facility, which Interim Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the amended and restated credit facility or the Definitive Documents.

4. Paragraphs 37 of the ARIO shall be amended as follows:

   37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "Interim Lender") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed <u>$1,800,000</u> unless permitted by further Order of this Court.

GENERAL

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

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

Signature of David Gruber
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.

No. S-205095
Vancouver Registry

**IN THE SUPREME
COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
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– AND –

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

ORDER MADE AFTER APPLICATION

David Gruber
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Schedule B

No. S-205095
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IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT
LIMITED PARTNERSHIP

SEALING ORDER

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	25/May/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 25th day of May 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 (the "**Monitor**"), to be filed ("**Sixth Report**"), and the Confidential Supplement to the Sixth Report; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS THAT:

1. Access to Sealed Items permitted by

[ ] Counsel of Record
[ ] Parties of Record
[ ] Further Court Order
[X] **Others**: Counsel for the Petitioners and counsel for the Monitor

Items to be sealed

Document Name	Date filed *(Date on Court Stamp)*	Number of copies filed, including any extra copies for the judge	Duration of sealing order *(to specific date or until further order)*	Sought	Granted	
					YES	NO
1) Entire File				☐	☐	☐
2) Specific Documents	**To be filed**	**One copy, to be sealed.**	**Until further order.**	☒	☐	☐
Confidential Supplement to the Fifth Report of the Monitor						
3) Clerk's Notes				☐	☐	☐
4) Order				☐	☐	☐
5) Reasons for Judgment				☐	☐	☐

[Remainder of page intentionally left blank]

GENERAL

2. 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
Lawyer for the Petitioners

BY THE COURT

____

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.

No. S-205095
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IN THE SUPREME
COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT
LIMITED PARTNERSHIP

SEALING ORDER

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Business E-mail: gruberd@bennettjones.com

Schedule C

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 MADAM JUSTICE FITZPATRICK	))	25/May/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 25th day of May 2021; AND ON HEARING David Gruber, counsel for the Petitioners and those other counsel and parties listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Sixth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed ("**Sixth Report**") and the Confidential Supplement to the Sixth Report; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Purchase and Sale Agreement dated May 13, 2021 (the "**Sale Agreement**") between the Petitioners and Solterra Acquisitions Corp. (the "**Purchaser**"), a copy of which is attached as Appendix "A" to the Confidential Supplement to the Sixth 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 "B" 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 of Port Capital Development (EV) Inc. ("**Residual Co**") which shall be added as a Petitioner in these CCAA Proceedings pursuant to paragraph 10 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 shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

   (c) Third, all of the Petitioners' right, title and interest in and to the Purchased Assets as described at section 1.1(rr)(i) in the Sale Agreement shall vest absolutely in the Purchaser 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 the Order of this Court dated June 8, 2021 (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 "C" 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 "D" 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;

   (d) Fourth, Port Capital Development (EV) Inc. 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 accept 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 is hereby directed to:

(a) enter the Purchaser as the owner of the Lands, as identified in Schedule "E" hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

(b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule "D".

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 on Schedule "D".

7. The Monitor, with the consent of the Purchaser, shall be at liberty 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 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 refer to and include Residual Co as defined in the Monitor's Certificate, *mutatis mutandis,* and (ii) "Property" shall 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) and 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 publically available in the manner prescribed under the CCAA.

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

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

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

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

Signature of DAVID GRUBER
☐ Party ☑ Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.

Schedule B – 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*, RSC 1985, c. C-46 (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**"), providing for the vesting in the Purchaser of all of the Petitioners' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 incorporate Residual Co in accordance with the Approval and Vesting Order. Residual Co shall here after refer to as •.

2. The Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Purchaser and Vendor that all conditions of Closing have been satisfied or waived by the applicable Parties.

3. The Monitor has received the Purchase Price.

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

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

Per:

____

Name:

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

Schedule D – 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 "E" – 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

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS AMENDED

AND

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

NOTICE OF APPLICATION

Name of applicant: 1296371 B.C. Ltd. (the "**Applicant**")

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on May 25, 2021 at 10:00 a.m., by MS Teams, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order, substantially in the form attached as Schedule A hereto, providing for the following relief (capitalized terms have the meaning ascribed to them herein):

   (a) authorizing and directing Dentons Canada LLP to pay $8,005,201, representing the Deposits held on behalf of the Pre-Sale Purchasers, to the Applicant on the following terms:

      (i) the Deposits shall be paid directly to CMLS for the purposes of repaying the CMLS Facility, as contemplated herein, and such payment shall constitute an advance of a loan by the Applicant to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(ii) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by the Applicant to Dentons Canada LLP, in trust, which amounts shall be held *pro rata* on behalf of each Pre-Sale Purchaser on the same terms as the Deposits were originally held;

(b) approving the loans from Domain, NumberCo and the Applicant (collectively, the "**New Lenders**") to the Petitioners (the "**New Loan Facility**"), for the purposes of allowing the Petitioners to repay the Interim Financing Facility and assign CMLS Facility and CMLS Security to the New Lenders;

(c) approving the repayment of the Interim Financing Facility, and upon repayment thereof, discharging and releasing the Interim Financing Security for all purposes;

(d) approving the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders, on such terms as the New Lenders and CMLS may agree, and upon repayment thereof;

(e) authorizing the Petitioners and the New Lenders to enter into an agreement to amend the CMLS Security to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders, and confirming the priority of the CMLS Security, as amended by the Amending Agreements, over all other creditors of the Petitioners;

(f) amending the Initial Order to:

(i) permit enforcement of the New Loan Facility and CMLS Security (as assigned), notwithstanding the stay of proceedings;

(ii) prohibit further interim financing without the consent of Domain;

(iii) remove the expanded powers granted to the Monitor in respect of the Borrowers, other than those expressly contemplated by the *Companies Creditors' Arrangement Act*; and

(iv) prohibits any further step in the CCAA Proceedings without the consent of Domain; and

(g) extending the stay of proceedings by six months, to and including December 11, 2021; and

2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Background

1. 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 the "**Terrace House Project**".

2. The Terrace House Project is an ongoing development project located at 1250 West Hastings Street, Vancouver, BC, on lands legally described as:

   PID: 006-721-397

   Lot 18, Except that part of the Canadian Pacific Railway Right-Of-Way as described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92

   (the "**Lands**").

3. The Petitioners are subsidiaries of Port Capital Group Inc. ("**Port Capital Group**"), which is in the business of real estate development primarily in British Columbia, but also in Toronto, Ontario.

4. Macario Teodoro Reyes ("**Reyes**") is a director and officer of Port Capital Group and the General Partner. Reyes is also:

   (a) A covenantor on the Petitioners' first mortgage and guarantor of the Petitioners' second mortgage in favour of the Terrace House Project's insurer; and

   (b) A covenantor or guarantor to most credit facilities advance by the Port Capital Group's various project specific limited partnerships and general partners.

5. The Applicant, 1296371 B.C. Ltd., is a company incorporated for the purpose of making the herein described loan. Reyes is a director and officer of the Applicant.

6. Domain Mortgage Company ("**Domain**") is a lender who is arm's length from Reyes, the Applicant and the Petitioners.

7. 1260780 B.C. Ltd. ("**NumberCo**") is a company controlled by Luz Consuelo Reyes, who is one of the Pre-Sale Purchasers (defined below) and is related to Reyes.

8. The following persons (collectively, the "**Pre-Sale Purchasers**") have entered into pre-sale purchase agreements with the Petitioners (collectively, the "**Pre-Sale Purchase Agreements**"), and have paid the following deposit amounts totaling $8,005,201

(collectively, the "**Deposits**") to Dentons Canada LLP ("**Dentons**"), in trust, pursuant to such Pre-Sale Purchase Agreements:

(a) Luz Consuelo Reyes, who has paid a deposit in the amount of $2,800,000;

(b) 1192706 B.C. Ltd. ("**1192706**"), who has paid a deposit in the amount of $1,155,000;

(c) 1208596 B.C. Ltd. ("**1208596**"), who has paid deposits in the amount of $975,201;

(d) 1301981 B.C. Ltd., as assignee from Hudani Investment Corp., who has paid a deposit in the amount of $1,162,500;

(e) 1207867 B.C. Ltd., who has paid a deposit in the amount of $645,000;

(f) Robert Davis, who has paid a deposit in the amount of $592,500; and

(g) Simon Wong, who has paid a deposit in the amount of $675,000.

CCAA Proceedings

9. On May 29, 2020, the Petitioners obtained an order in these proceedings (the "**Initial Order**") granting them various relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [***CCAA***].

10. 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**"). The Stay of Proceedings has since been extended to June 11, 2021.

11. On June 8, 2020, the Petitioners obtained an amended and restated initial order in these proceedings (the "**ARIO**"). Among other things, the ARIO approved an interim financing facility (the "**Interim Lender Facility**") from Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") and granted a related interim lender's charge (the "**Interim Lender's Charge**").

Encumbrances on the Lands and Creditors

12. Under the Initial Order and the ARIO, the Monitor, among others, was granted a first priority charge against the Lands, which must not exceed $250,000.00 (the "**Administration Charge**").

13. Pursuant to the ARIO (as amended), the Interim Lender was authorized to extend the Interim Lender Facility and was granted the Interim Lender's Charge, capped at

$1,500,000.00. As of May 21, 2021, the amount owed to the Interim Lender is estimated to be $1,287,274.88.

14. CMLS Financial Ltd. ("**CMLS**") provided construction financing for the Terrace House Project (the "**CMLS Facility**") and holds security over all property and assets of the Petitioners for payment thereof (the "**CMLS Security**"). With the exception the Administration Charge and the Interim Lender's Charge, CMLS the senior secured creditor. As of May 21, 2021, the amount owed to CMLS is estimated to be $21,233,416.87.

15. Aviva Insurance Company of Canada ("**Aviva**") provided a deposit protection insurance facility to permit the Petitioners to have access to certain pre-sale purchasers' deposit monies for the payment of project costs. Aviva has second ranked security against the assets of the Petitioners, subject to the CMLS Security.

16. In addition, the Petitioners 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**").

Redemption Financing

17. The Applicant, together with Domain and NumberCo, seek to provide funding to the Petitioner to allow it to repay the Interim Financing Facility, and for the New Lenders to acquire the CMLS Facility and CMLS Security. The New Loan Facility is comprised of the following parts:

   (a) a loan from Domain to the Petitioners, in the amount of $14.5 million, pursuant to a commitment letter dated May 11, 2021 (the "**Domain Commitment Letter**");

   (b) a loan from NumberCo to the Petitioners, in the amount of $1.5 million, pursuant to a commitment letter and acknowledgment dated May 7, 2021; and

   (c) a loan from the Applicant to the Petitioners, funded by a release of the Deposits held in trust by Dentons.

18. The New Loan Facility provides available funding (net of holdbacks contemplated by the Domain Commitment Letter) in the amount of approximately $22.5 million. This will facilitate full repayment of the Interim Lending Facility, and substantial repayment of the CMLS Facility.

19. Repayment of the New Loan Facility will be made, firstly, to Domain, secondly, to NumberCo, and lastly, to the Applicant. In accordance with the orders sought herein, upon repayment of the amount owing the Applicant, such amount will be returned to

Dentons, in trust, to continue to be held as deposits under the Pre-Sale Purchase Agreements.

20. The majority of the conditions to the Domain Commitment Letter have been satisfied. Currently, the key conditions which remain unsatisfied under the Domain Commitment Letter include:

    (a) this Honourable Court granting the Order sought in this Application;

    (b) Domain successfully offering the New Loan Facility as a syndicated mortgage investment to private mortgage investors;

    (c) the consent of Aviva to the transfer and assignment of the CMLS Facility and the CMLS Security to the New Lenders; and

    (d) CMLS executing an assignment and transfer agreement with respect to the purchase and assignment of the CMLS Facility and CMLS Security.

21. The Applicant is working with Domain, CMLS and Aviva to ensure that, at the time this Application is heard, the only remaining condition is approval by this Honourable Court.

22. The NumberCo commitment letter is unconditional. The advance contemplated by this commitment letter is currently being held by Dentons, in trust.

23. The Applicant was incorporated to facilitate the advance of the Deposits to allow the assignment of the CMLS Security. Each of the Pre-Sale Purchasers have executed irrevocable directions to pay (the "**Irrevocable Directions**"), authorizing the use of their deposits in the transaction contemplated above.

24. Each of the Irrevocable Directions expressly contemplate the transaction described above, and are conditional on:

    (a) consent of the Monitor (on behalf of the Petioners), CMLS and the Interim Lender;

    (b) execution of a purchase and assignment agreement to allow the Applicant to acquire the loans made by CMLS and the Interim Lender; and

    (c) necessary approvals by this Honourable Court.

25. The requirement for consent by the Interim Lender is now irrelevant, given the intention to pay out this amount in full, and to secure the advances associated therewith by the CMLS Security.

26. In addition, the Irrevocable Directions granted by 1192706 and 1208596 are conditional on review of documentation. The Applicant is working with these parties and their counsel, Clark Wilson LLP, to ensure this condition is satisfied at the time this Application is heard.

Restructuring Plan

27. The Applicant's offer is a refinancing, it is not seeking to terminate any pre-sale contracts or vest off or compromise any claims against the Petitioners.

28. The transaction is designed to create an opportunity to secure new construction financing that will allow the Petitioners to repay the New Loan Facility and exit *CCAA* proceedings. As a result, the Applicant's offer is coupled with an extension to the Stay of Proceedings to allow the Petitioners time to secure new construction financing.

29. The Applicant is confident that, following refinancing, the Petitioners will secure new construction financing. The Petitioners are in advanced discussions with at least one lender. Additional lenders have conducted extensive due diligence.

30. These *CCAA* proceedings have, to date, been focused on repayment of the CLMS Facility. The New Loan Facility, along with cooperation from Domain, will provide the opportunity to shift the focus to a long-term restructuring.

31. Securing new construction financing requires interim steps that are predicated on having control of the Terrace House Project. The steps include:

    (a) Review of all trades and consultants. This includes confirm drawings and specifications with lead consultants, architects and engineers; updating contracts with existing trades and consultants; and replacing contracts as necessary;

    (b) Confirm construction schedule and budget;

    (c) Renew and extend permits; and

    (d) Review and continue pre-sale program. This includes reviewing the existing contracts; engaging new marketing partners and sales group, and may require re-drafting the disclosure statement and updated purchase contracts.

32. Interim working capital will be funded by existing limited partners and new third party investors. This working capital is expected to be in the range of $3 to $5 million, which will be sourced externally and will not encumber the Lands or other assets.

33. With control of the Terrace House Project and the breathing room provided by the New Loan Facility, it is estimated that completing the interim steps outlined above and finalizing a term sheet a new construction lender will take 30 to 60 days.

34. The New Loan Facility will facilitate securing new construction financing. This will allow the Terrace House Project to proceed as intended, which will permit some, or potentially full, recovery by Aviva and the Other Creditors, and will be a benefit to all stakeholders.

Part 3: LEGAL BASIS

1. The Applicant rely on the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [***CCAA***], the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, s. 18(2) of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 [***REDMA***], and the inherent jurisdiction of the Honourable Court.

Approval of Transaction

2. Under s. 11 of the *CCAA*, a court may "make any order that is considers appropriate in the circumstances."

3. In exercising its discretion, a court "must first of all provide the conditions under which the debtor can attempt to reorganize." Decisions under the *CCAA* take many forms.

> ***Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 60.**

4. The baseline consideration that a court should always bear in mind are the requirements of appropriateness, good faith, and due diligence:

> Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. 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. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts 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.

> ***Century Services* at para. 70**

5. Debtors and creditors share a common goal: "maximizing recoveries." Fairness demands that a *CCAA* judge "recognize and meaningfully address circumstances in which parties are working against the goals of the statute".

> ***9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 75, citing Janis Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law", 2016 ANNREVINSOLV 2 at 30.**

6. When granting relief under s. 11, a court should balance the interests of all stakeholders and ask whether the order sought advanced the overall prospects of a successful restructuring. Relief under the *CCAA* may prejudice a creditor in favour of the collective whole. "The court's primary concerns under the *CCAA* must be for the debtor and all of the creditors."

> ***Essar Steel Algoma Inc. et al Re*, 2017 ONSC 12 at paras. 41-42.**
> ***Canwest Global Communications Corp.*, 2011 ONSC 2215 at para. 25, citing *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24, 1993 CarswellOnt 183 at para. 6.**
> **See also *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 113, leave to appeal ref'd 2020 BCCA 364.**

7. The New Loan Facility will repay the Interim Lender in full and provides significant recovery for CMLS. The Applicant, in connection with its offer, does not seek to terminate any pre-sale contracts or vest off or compromise any other claims against the Petitioners. The transaction proposed by the Applicant, by design, preserves the prospect of a restructuring for all stakeholders.

8. The Applicant anticipates that the other transactions brought before the Court result in a greater shortfall to CMLS, and no recovery for any subsequent stakeholders. As a result, the transaction proposed by the Applicant is clearly superior.

9. There is a realistic prospect, following approval of the New Loan Facility and an extension to the Stay of Proceedings, that the Applicant will successfully refinance the construction of the Terrace House Project. If successful, the plan will permit some, or potentially full, recovery by Aviva and the Other Creditors. This plan may avoid losses to stakeholders and provides the greatest prospect of recovery for all creditors.

10. The other transactions before the Court would extinguish the claims of the Other Creditors. Their loss is certain under that transaction; the Other Creditors have no ability to mitigate these losses. The other transaction does not impose a risk on the Other Creditors; it would create a definitive loss. In contrast, the transaction proposed by the

Applicant is not seeking to terminate any pre-sale contracts or vest off or compromise any other claims against the Petitioners. Under the restructuring plan, there is a reasonable prospect that the Applicant will secure new construction financing that will permit some, or potentially full, recovery by the Other Creditors. The comparison for the Other Creditors is between certain loss and the potential for some, or even full, recovery with no added risk. The Applicant's offer is clearly a benefit to the Other Creditors as it is the only path to recovery.

11. The transaction proposed by the Applicant is appropriate as it advances the policy objectives underlying the *CCAA*. Given the good faith efforts and due diligence on the part of Reyes to generate new construction financing, and the progress shown, there is a real prospect of greater recovery for all stakeholders. This is coupled with increased recovery for CMLS.

Century Services at paras. 70-71

Release of Deposits

12. A trustee that holds deposits under *REDMA* must not release the deposits. Section 18(2) sets out exceptions to this prohibition. Among other exceptions, deposits may be released to a purchasers with the written consent of the purchaser and the developer (s. 18(2)(b)) and deposits may be released in accordance with a court order (s. 18(2)(h)).

REDMA, s. 18(2)(b), (h).

13. The Deposits paid by the Pre-Sale Purchasers are held, in trust, by Dentons pursuant to *REDMA*.

14. The Irrevocable Directions are sufficient to engage s. 18(2)(b). The transaction is therefore within the scope of the deposit exception provisions of *REDMA*.

Bison Properties Ltd. (Re), 2018 BCSC 1299 at paras. 164, 185.

15. The Pre-Sale Purchasers all sought and received independent legal advice in connection with the Irrevocable Directions.

16. Given the Irrevocable Directions, an order pursuant to s. 18(2)(h) of *REDMA* authorizing and directing Dentons the Deposits to the Applicant is appropriate in the circumstances.

Stay Extension

17. Under s. 11.02 of the *CCAA*, a court may extend a stay of proceedings for any period that the court considers necessary, provided the applicant satisfies the court that:

(a) Circumstance exist that make the order appropriate; and

(b) The applicant has acted, and is acting, in good faith and with due diligence.

18. The fundamental purpose of the *CCAA* is to facilitate compromises and agreements between companies and their creditors. The *CCAA* is intended to have a wide scope to enable a company to remain in operation for the future benefit of both the company and its creditors, even if that future benefit is not certain.

***Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 at paras. 27-28.**

19. The extension to the Stay of Proceedings is a condition under the Domain Commitment Letter, but critically it is necessary to enable the Applicant to advance restructuring efforts with respect to the Terrace House Project.

20. The Applicant are acting in good faith and with due diligence to secure new constructions financing. There is a reasonable prospect that such funding will be secured within the term of the Domain Commitment Letter and that the Terrace House Project will complete as intended. This will result is the greatest return to Aviva and the Other Creditors, and will be a benefit to all stakeholders.

Part 4: MATERIAL TO BE RELIED ON

1. Fifth Report of the Monitor, dated April 13, 2021;

2. Affidavit #2 of Macario Teodoro Reyes, made 21/MAY/2021; and

3. Such further material as counsel may advise and this Honourable Court my permit.

The applicant(s) estimate(s) that the application will 2 hours.

☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of these proceedings.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

(a) file an Application Response in Form 33,

(b) file the original of every affidavit, and of every other document, that

  (i) you intend to refer to at the hearing of this application, and

  (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

  (i) a copy of the filed Application Response;

  (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

  (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 21/MAY/2021

Signature of Jordan Schultz
Lawyer for the Applicant

To be completed by the court only: Order made ☐ in the terms requested in paragraphs ________________ of Part 1 of this Notice of Application ☐ with the following variations and additional terms: ________________________________ ________________________________ ________________________________ Date: ________________________________ Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

SCHEDULE "A"

DRAFT ORDER

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

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

ORDER MADE AFTER APPLICATION

	)	THE HONOURABLE MADAM	)	
BEFORE	)		)	__ / ______ / 2021
	)	JUSTICE FITZPATRICK	)	

ON THE APPLICATION of 1296371 B.C. Ltd. (the "**Applicant**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Jordan Schultz and Eamonn Watson, counsel for the Applicant, and those counsel listed in Schedule "A" hereto;

THIS COURT ORDERS that:

Release of Deposits

1. Dentons Canada LLP ("**Dentons**") is hereby authorized and directed to pay the following amounts, each of which are deposits (collectively the "**Deposits**") held in trust by Dentons pursuant to various pre-sale purchase agreements (the "**Pre-Sale Purchase Agreements**") among the Petitioners, as vendors, and the following persons (the "**Pre-**

Sale Purchasers"), as purchasers, each in respect the following units in the Terrace House development project:

(a) $2,800,000, representing the deposit paid by Luz Consuelo Reyes in respect of her agreement to purchase unit 801;

(b) $1,155,000, representing the deposit paid by 1192706 B.C. Ltd., in respect of its agreement to purchase unit 1001;

(c) $975,000, representing the deposit paid by 1208596 B.C. Ltd., in respect of its agreements to purchase units CRU#1 and CRU#2;

(d) $1,162,500, representing the deposit paid by 1301981 B.C. Ltd. (as assignee from Hudani Investment Corp.), in respect of its agreement to purchase unit 901;

(e) $645,000, representing the deposit paid by 1207867 B.C. Ltd., in respect of its agreement to purchase unit 403;

(f) $592,500, representing the deposit paid by Robert Davis in respect of his agreement to purchase unit 503; and

(g) $675,000, representing the deposit paid by Simon Wang in respect of his agreement to purchase unit 401,

to the Applicant on the following terms:

(h) the Deposits shall be paid by the Applicant directly to CMLS Financial Ltd. ("**CMLS**") for the purposes of purchasing and taking an assignment of all loans (the "**CMLS Facility**") and security (the "**CMLS Security**") held by CMLS against the Petitioners, and such payment shall constitute an advance of a loan by the Applicant to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(i) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by the Applicant to Dentons, in trust, which amounts shall be held pro rata as a Deposit pursuant to each Pre-Sale Purchase Agreement.

2. The Pre-Sale Purchase Agreements shall be unaffected by this Order, except as expressly provided for herein.

Refinancing Transaction

3. The Petitioner is hereby authorized, empowered and directed to obtain and borrower under a credit facility from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**NumberCo**") and the Applicant (collectively, the "**New Lenders**") in order to finance:

(a) repayment in full of all amounts owing to the "**Interim Lender**" (as defined in the Amended and Restated Initial Order made June 8, 2020, herein the "**ARIO**") pursuant to the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, as amended (the "**Interim Lending Facility**");

(b) the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders,

provided that principal amount borrowed under such credit facility shall not exceed $24,005,201 (the "**New Loan Facility**") unless permitted by further Order of this Court.

4. Such credit facility shall be:

(a) in the case of the loan by Domain, on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and Domain dated May 11, 2021 (the "**Domain Commitment Letter**"); and

(b) in the case of the loans by NumberCo and the Applicant, on an interest free basis, payable on demand, but subject to repayment of the Petitioners' obligations to Domain

(collectively, the "**Finance Terms**").

5. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**New Definitive Documents**"), as are contemplated by the Finance Terms or as may be reasonably required by the New Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the New Lenders under and pursuant to the Finance Terms and the New Definitive Documents as and when the same become due and are to be performed.

6. Upon repayment in full of the Interim Lending Facility, as contemplated in paragraph 3(a) hereof, all security held by the Interim Lender as security for the

Petitioners Obligations under the Interim Lending Facility (including, without limitation, the Interim Lender's Charge (as defined in the ARIO)) shall be discharged and released in full, for all purposes.

7. The purchase and assignment of the CMLS Loan and the CMLS Security by Domain, for and on behalf of the New Lenders (the "**Security Assignment**"), is hereby authorized and approved, and following completion of the Security Assignment, the Petitioners are authorized, empowered and directed to execute and deliver such amending agreements or other documents as may be reasonably required by the New Lenders (collectively, the "**Amending Agreements**") to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders.

8. The CMLS Security, as amended by the Amending Agreements, shall constitute a mortgage, security interest, assignment by way of security and charge on the "**Property**" (as defined in the ARIO) and such charge shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge (as defined in the ARIO) and those claims contemplated by Section 11.8(8) of the CCAA.

Amendments to Initial Order

9. Notwithstanding any other provision of the ARIO:

(a) upon the occurrence of a default under the Domain Commitment Letter, any of the New Definitive Documents, or the CMLS Security (as amended), Domain, upon five business days' notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Domain Commitment Letter, the New Definitive Documents and the CMLS Security (as amended), including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

(b) the foregoing rights and remedies of Domain shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

10. Domain, in its capacity as lender pursuant to the Domain Commitment Letter, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), or any

proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under the Domain Commitment Letter.

11. No order shall be made, including pursuant to section 11.2 of the CCAA, granting any security or charge priority over the CMLS Security (as amended) without the consent of Domain.

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

13. No further order shall be made in these proceedings without the consent of Domain.

Extension of Stay

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

General

15. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

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

Signature of Jordan Schultz
Lawyer for the Applicant

By the Court.

Registrar

SCHEDULE "A"

(List of Counsel)

Counsel name / litigant	Party Represented

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

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

ORDER MADE AFTER APPLICATION

	)	THE HONOURABLE MADAM	)	
BEFORE	)		)	__ / ______ / 2021
	)	JUSTICE FITZPATRICK	)	

ON THE APPLICATION of 1296371 B.C. Ltd. (the "**Applicant**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Jordan Schultz and Eamonn Watson, counsel for the Applicant, and those counsel listed in Schedule "A" hereto;

THIS COURT ORDERS that:

Release of Deposits

1. Dentons Canada LLP ("**Dentons**") is hereby authorized and directed to pay the following amounts, each of which are deposits (collectively the "**Deposits**") held in trust by Dentons pursuant to various pre-sale purchase agreements (the "**Pre-Sale Purchase Agreements**") among the Petitioners, as vendors, and the following persons (the "**Pre-**

Sale Purchasers"), as purchasers, each in respect the following units in the Terrace House development project:

(a) $2,800,000, representing the deposit paid by Luz Consuelo Reyes in respect of her agreement to purchase unit 801;

(b) $1,155,000, representing the deposit paid by 1192706 B.C. Ltd., in respect of its agreement to purchase unit 1001;

(c) $975,000, representing the deposit paid by 1208596 B.C. Ltd., in respect of its agreements to purchase units CRU#1 and CRU#2;

(d) $1,162,500, representing the deposit paid by 1301981 B.C. Ltd. (as assignee from Hudani Investment Corp.), in respect of its agreement to purchase unit 901;

(e) $645,000, representing the deposit paid by 1207867 B.C. Ltd., in respect of its agreement to purchase unit 403;

(f) $592,500, representing the deposit paid by Robert Davis in respect of his agreement to purchase unit 503; and

(g) $675,000, representing the deposit paid by Simon Wang in respect of his agreement to purchase unit 401,

to the Applicant on the following terms:

(h) the Deposits shall be paid by the Applicant directly to CMLS Financial Ltd. ("**CMLS**") for the purposes of purchasing and taking an assignment of all loans (the "**CMLS Facility**") and security (the "**CMLS Security**") held by CMLS against the Petitioners, and such payment shall constitute an advance of a loan by the Applicant to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(i) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by the Applicant to Dentons, in trust, which amounts shall be held pro rata as a Deposit pursuant to each Pre-Sale Purchase Agreement.

2. The Pre-Sale Purchase Agreements shall be unaffected by this Order, except as expressly provided for herein.

Refinancing Transaction

3. The Petitioners are hereby authorized, empowered and directed to obtain and borrower under a credit facility from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**NumberCo**") and the Applicant (collectively, the "**New Lenders**") in order to finance:

(a) repayment in full of all amounts owing to the "**Interim Lender**" (as defined in the Amended and Restated Initial Order made June 8, 2020, herein the "**ARIO**") pursuant to the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, as amended (the "**Interim Lending Facility**");

(b) the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders,

provided that principal amount borrowed under such credit facility shall not exceed $25,000,000 (the "**New Loan Facility**") unless permitted by further Order of this Court.

4. Such credit facility shall be:

(a) in the case of the loan by Domain, on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and Domain dated June 4, 2021 (the "**Domain Commitment Letter**"); and

(b) in the case of the loans by NumberCo and the Applicant, on an interest free basis, payable on demand, but subject to repayment of the Petitioners' obligations to Domain

(collectively, the "**Finance Terms**").

5. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**New Definitive Documents**"), as are contemplated by the Finance Terms or as may be reasonably required by the New Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the New Lenders under and pursuant to the Finance Terms and the New Definitive Documents as and when the same become due and are to be performed.

6. Upon repayment in full of the Interim Lending Facility, as contemplated in paragraph 3(a) hereof, all security held by the Interim Lender as security for the

Petitioners Obligations under the Interim Lending Facility (including, without limitation, the Interim Lender's Charge (as defined in the ARIO)) shall be discharged and released in full, for all purposes.

7. The purchase and assignment of the CMLS Loan and the CMLS Security by Domain, for and on behalf of the New Lenders (the "**Security Assignment**"), is hereby authorized and approved, and following completion of the Security Assignment, the Petitioners are authorized, empowered and directed to execute and deliver such amending agreements or other documents as may be reasonably required by the New Lenders (collectively, the "**Amending Agreements**") to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders.

8. The CMLS Security, as amended by the Amending Agreements, shall constitute a mortgage, security interest, assignment by way of security and charge on the "**Property**" (as defined in the ARIO) and such charge shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge (as defined in the ARIO) and those claims contemplated by Section 11.8(8) of the CCAA.

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

Amendments to Initial Order

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

(a) upon the occurrence of a default under the Domain Commitment Letter, any of the New Definitive Documents, or the CMLS Security (as amended), Domain, upon five business days' notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Domain Commitment Letter, the New Definitive Documents and the CMLS Security (as amended), including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

(b) the foregoing rights and remedies of Domain shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

11. Domain, in its capacity as lender pursuant to the Domain Commitment Letter, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under the Domain Commitment Letter.

12. No order shall be made, including pursuant to section 11.2 of the CCAA, granting any security or charge priority over the CMLS Security (as amended) without the consent of Domain.

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

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

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

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

Extension of Stay

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

17. The Petitioners are hereby authorized, empowered and directed to obtain and borrower under a credit facility from NumberCo in order to finance working capital requirements following funding of the New Loan Facility and completion of the Security Assignment, provided that principal amount borrowed under such credit facility shall not

exceed $750,000 (the "**Working Capital Facility**") unless permitted by further Order of this Court.

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

19. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements and other definitive documents (collectively, the "**WC Definitive Documents**"), as are contemplated by the NumberCo Commitment Letter or as may be reasonably required by NumberCo pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to NumberCo under and pursuant to the NumberCo Commitment Letter and the WC Definitive Documents as and when the same become due and are to be performed.

General

20. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

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

Signature of Jordan Schultz
Lawyer for the Applicant

By the Court.

Registrar

SCHEDULE "A"

(List of Counsel)

Counsel name / litigant	Party Represented

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS AMENDED

AND

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

ORDER MADE AFTER APPLICATION

	)	THE HONOURABLE MADAM	)	
BEFORE	)		)	__ / ______ / 2021
	)	JUSTICE FITZPATRICK	)	

ON THE APPLICATION of 1296371 B.C. Ltd. (the "**Applicant**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Jordan Schultz and Eamonn Watson, counsel for the Applicant, and those counsel listed in Schedule "A" hereto;

THIS COURT ORDERS that:

Release of Deposits

1. Dentons Canada LLP ("**Dentons**") is hereby authorized and directed to pay the following amounts, each of which are deposits (collectively the "**Deposits**") held in trust by Dentons pursuant to various pre-sale purchase agreements (the "**Pre-Sale Purchase Agreements**") among the Petitioners, as vendors, and the following persons (the

"**Pre-Sale Purchasers**"), as purchasers, each in respect the following units in the Terrace House development project:

(a) $2,800,000, representing the deposit paid by Luz Consuelo Reyes in respect of her agreement to purchase unit 801;

(b) $1,155,000, representing the deposit paid by 1192706 B.C. Ltd., in respect of its agreement to purchase unit 1001;

(c) $975,000, representing the deposit paid by 1208596 B.C. Ltd., in respect of its agreements to purchase units CRU#1 and CRU#2;

(d) $1,162,500, representing the deposit paid by 1301981 B.C. Ltd. (as assignee from Hudani Investment Corp.), in respect of its agreement to purchase unit 901;

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(f) $592,500, representing the deposit paid by Robert Davis in respect of his agreement to purchase unit 503; and

(g) $675,000, representing the deposit paid by Simon Wang in respect of his agreement to purchase unit 401,

to the Applicant on the following terms:

(h) the Deposits shall be paid by the Applicant directly to CMLS Financial Ltd. ("**CMLS**") for the purposes of purchasing and taking an assignment of all loans (the "**CMLS Facility**") and security (the "**CMLS Security**") held by CMLS against the Petitioners, and such payment shall constitute an advance of a loan by the Applicant to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(i) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by the Applicant to Dentons, in trust, which amounts shall be held pro rata as a Deposit pursuant to each Pre-Sale Purchase Agreement.

2. The Pre-Sale Purchase Agreements shall be unaffected by this Order, except as expressly provided for herein.

Refinancing Transaction

3. The ~~Petitioner is~~Petitioners are hereby authorized, empowered and directed to obtain and borrower under a credit facility from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**NumberCo**") and the Applicant (collectively, the "**New Lenders**") in order to finance:

(a) repayment in full of all amounts owing to the "**Interim Lender**" (as defined in the Amended and Restated Initial Order made June 8, 2020, herein the "**ARIO**") pursuant to the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, as amended (the "**Interim Lending Facility**");

(b) the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders,

provided that principal amount borrowed under such credit facility shall not exceed $~~24,005,201~~25,000,000 (the "**New Loan Facility**") unless permitted by further Order of this Court.

4. Such credit facility shall be:

(a) in the case of the loan by Domain, on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and Domain dated ~~May 11,~~June 4, 2021 (the "**Domain Commitment Letter**"); and

(b) in the case of the loans by NumberCo and the Applicant, on an interest free basis, payable on demand, but subject to repayment of the Petitioners' obligations to Domain

(collectively, the "**Finance Terms**").

5. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**New Definitive Documents**"), as are contemplated by the Finance Terms or as may be reasonably required by the New Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the New Lenders under and pursuant to the Finance Terms and the New Definitive Documents as and when the same become due and are to be performed.

6. Upon repayment in full of the Interim Lending Facility, as contemplated in paragraph 3(a) hereof, all security held by the Interim Lender as security for the Petitioners Obligations under the Interim Lending Facility (including, without limitation, the Interim Lender's Charge (as defined in the ARIO)) shall be discharged and released in full, for all purposes.

7. The purchase and assignment of the CMLS Loan and the CMLS Security by Domain, for and on behalf of the New Lenders (the "**Security Assignment**"), is hereby authorized and approved, and following completion of the Security Assignment, the Petitioners are authorized, empowered and directed to execute and deliver such amending agreements or other documents as may be reasonably required by the New Lenders (collectively, the "**Amending Agreements**") to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders.

8. The CMLS Security, as amended by the Amending Agreements, shall constitute a mortgage, security interest, assignment by way of security and charge on the "**Property**" (as defined in the ARIO) and such charge shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge (as defined in the ARIO) and those claims contemplated by Section 11.8(8) of the CCAA.

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

Amendments to Initial Order

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

(a) upon the occurrence of a default under the Domain Commitment Letter, any of the New Definitive Documents, or the CMLS Security (as amended), Domain, upon five business days' notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Domain Commitment Letter, the New Definitive Documents and the CMLS Security (as amended), including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

(b) the foregoing rights and remedies of Domain shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

11. ~~10.~~ Domain, in its capacity as lender pursuant to the Domain Commitment Letter, shall be treated as unaffected in any plan of arrangement or compromise filed by the ~~Petitioner~~Petitioners under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), or any proposal filed by the ~~Petitioner~~Petitioners under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under the Domain Commitment Letter.

12. ~~11.~~ No order shall be made, including pursuant to section 11.2 of the CCAA, granting any security or charge priority over the CMLS Security (as amended) without the consent of Domain.

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

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

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

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

Extension of Stay

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

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

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

19. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements and other definitive documents (collectively, the "**WC Definitive Documents**"), as are contemplated by the NumberCo Commitment Letter or as may be reasonably required by NumberCo pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to NumberCo under and pursuant to the NumberCo Commitment Letter and the WC Definitive Documents as and when the same become due and are to be performed.

General

20. ~~15.~~ Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

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

____
Signature of Jordan Schultz
Lawyer for the Applicant

By the Court.

____
Registrar

SCHEDULE "A"

(List of Counsel)

Counsel name / litigant	Party Represented

Document comparison by Workshare 9 on 7-Jun-21 5:24:10 PM

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Document 2 ID	interwovenSite://NDCDMS01.LAW.FIRM/NATDOCS/55287215/2
Description	#55287215v2<NATDOCS> - Draft Order Approving Refinancing Transaction (v2)
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Statistics:	
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Style change	0
Format changed	0
Total changes	52

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

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

APPLICATION RESPONSE

Application response of: Solterra Acquisitions Corp. ("**Solterra**")

THIS IS A RESPONSE TO the notice of application of the Petitioners, Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership, dated May 20, 2021 (the "**Solterra PSA Approval Application**").

Part 1: ORDERS CONSENTED TO

Solterra consents to the granting of the orders set out in ALL paragraphs of Part 1 of the Solterra PSA Approval Application.

Part 2: ORDERS OPPOSED

Solterra opposes the granting of the orders set out in paragraphs NONE of Part 1 of the Solterra PSA Approval Application.

Part. 3: ORDERS ON WHICH NO POSITION IS TAKEN

Solterra takes no position on the granting of the orders set out in paragraphs NONE of Part 1 of the Solterra PSA Approval Application.

Part 4: FACTUAL BASIS

A. Overview

1. The Response filed by Landa Global Acquisitions Ltd. ("**Landa**") to the Solterra PSA Approval Application requires this court to revisit the law concerning when a British Columbia court will re-open a sale process in the face of a late offer, and in what circumstances the court will exercise its discretion to do so. On the facts of this case, and with reference to the relevant authorities, there is no basis on which to re-open the sale process. Rather, the court should accept the recommendation of its officer to approve the Solterra PSA (defined below).

2. On May 14, 2021, the Monitor (on behalf of the Petitioners) and Solterra entered into a purchase and sale agreement dated May 13, 2021 (the "**Solterra PSA**") for the acquisition of the Terrace House Project (defined below). It did so at the conclusion of the Final Marketing Process (defined below), which was embodied in the purchase and sale agreement dated March 25, 2021 (the "**Landa PSA**") among the Petitioners and Landa.

3. According to the Monitor, the Landa PSA, "did not contemplate Landa making any further bids in the event a Superior Offer was received".[1] Indeed, the Landa PSA specifically provided that the Final Marketing Process was intended "for the purposes of soliciting Bona Fide Offers from <u>prospective purchasers that are not party to this Agreement</u>." [Emphasis added].

4. Despite the terms of the Landa PSA and the Monitor's advice as to how the Final Marketing Process operated, Landa purported to submit a further offer to purchase the Terrace House Project that was reportedly $850,000 greater than the purchase price under the Solterra PSA (the "**Revised Landa Offer**") and had a quicker closing date. Using Landa's calculations, the difference in price is approximately 4%.[2]

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[1] Affidavit #1 of Balpreet Khatra, made May 25, 2021 ("**Khatra #1**"), Exhibit "C", p. 60.

[2] The calculation is based on Landa's submissions at the last hearing that, taking into account the quicker closing date and the break fee payable under the Landa PSA, the purchase price under the Revised Landa Offer was

5. In opposing the Solterra PSA Approval Application, Landa sought to have the Revised Landa Offer approved, or an order directing a sealed bid process. In doing so, Landa argues in essence that in a court-supervised sale process in British Columbia, price triumphs over process in all instances. That is, of course, not the case.

6. In B.C., as in other jurisdictions, when presented with a late offer the court must consider whether it shows that the price contained in the original offer was so unreasonably low as to call into question the sale process that produced it. If the later offer meets this threshold, then the court will consider all relevant circumstances to determine whether to re-open the sale process.

7. At only 4% more than the purchase price under the Solterra PSA,[3] the Revised Landa Offer does not cast doubt on the adequacy of the marking and sale process for the Terrace House Project, including, in particular, the Final Marketing Process. For this reason alone, the Revised Landa Offer is should not be considered on this application.

8. Moreover, there is in this case a greater concern for the efficacy and integrity of the sale process, including to avoid what might otherwise result in significant unfairness to Solterra. As the court is now aware, Solterra's offer was disclosed to Landa, who used that knowledge to prepare and submit the Revised Landa Offer, contrary to the terms of its agreement with the Petitioners (by the Monitor) and contrary to the process overseen by the court's officer and approved by this court.

9. The situation would be different had the Final Marketing Process contemplated the submission of a further offer by Landa (or any other party). In that case, the terms of the Solterra PSA would not have been disclosed. But that was not the process, and the prejudice that would be visited upon Solterra if the court re-opens the sale process at this stage is unmitigable.

10. In the circumstances, the only fair and appropriate outcome in this case is for the court to approve the Solterra PSA.

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approximately $850,000 greater than that under the Solterra PSA. Solterra should not be taken as accepting Landa's calculations.

[3] Using Landa's own calculations.

B. Background

11. The Petitioners are the owners of the unfinished development known as the "Terrace House Project", a luxury high-rise residential strata building located at 1250 W Hastings Street, Vancouver (the "**Terrace House Project**").

12. On May 29, 2020, the Petitioners obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), including the appointment of the Monitor with enhanced powers to explore restructuring opportunities for the Terrace House Project and administer a "dual-track" sale and investment solicitation process (the "**SISP**") to secure an equity investment, a refinancing, or, alternatively, a sale of the Terrace House Project.[4]

13. The SISP initially resulted in the execution of an offer submitted by Bosa Properties (OC) Inc., which was approved by this Court on December 1, 2020 (the "**Bosa Offer**"). The Bosa Offer fell through in or around February 2021.[5]

14. On March 1, 2021, Landa, one of the six parties that submitted a bid under the SISP, sent the Monitor a letter of intent to acquire the Terrace House Project.[6]

(I) The Landa PSA

15. Following a series of discussions, Landa and the Monitor (on behalf of the Petitioners) executed the Landa PSA, which provided, among other things, that:

(a) Landa would purchase the Terrace House Project for the purchase price of $19.5 million (subject to certain adjustments);[7]

(b) notwithstanding any terms of the Landa PSA to the contrary, beginning on the day the Landa PSA was approved by the court and continuing for 15 days, the Petitioners and the Monitor remained at liberty to engage in further marketing of,

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[4] 5th Report of the Monitor, dated April 13, 2021 ("**5th Report**"), para. 4.

[5] Sixth Report of the Monitor, dated May 20, 2021 ("**6th Report**"), paras. 10-12.

[6] 5th Report, para. 27.

[7] Application Response of Landa dated May 25, 2021 ("**Landa Application Response**"), Part 4, para. 4.

and negotiations in connection with, the Terrace House Project "for the purposes of soliciting Bona Fide Offers from prospective purchasers that are not party to this Agreement" [Emphasis added];[8]

(c) in the event that the Petitioners received a Superior Offer (as defined thereunder), upon completion of such offer, a Break Fee would be payable by the Petitioners to Landa in the amount of $200,000;[9] and

(d) in the event that a Superior Offer was not received, application would be made for an approval and vesting order in favour of Landa.[10]

16. The further solicitation and sale process set out in the Landa PSA was described by the Monitor as the "**Final Marketing Phase**" or the "**Final Marketing Process**".[11] According to the Monitor, and consistent with the very term of the Landa PSA concerning the solicitation of further offers, the Final Marketing Process did not allow for Landa to submit a further bid.

17. On April 16, 2021, this Court granted an order approving the Landa PSA. Paragraph 3 of that order reads as follows:

> 3. Notwithstanding the Approval of the PSA, the Monitor is at liberty to conduct such further marketing and negotiations in connection with, the property of the Petitioners as determined by the Monitor. [Emphasis added]

(II) The Solterra PSA

18. On April 19, 2021, the Monitor sent a letter to eight parties that had expressed interest in the Terrace House Project under the SISP describing the Final Marketing Process and advising that the deadline for the submission of cash offers would be May 7, 2021 (the "**Bid Deadline**").[12]

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[8] Landa Application Response, Part 4, para. 8.

[9] 5th Report, para. 27; Landa Application Response, Part 4, para. 7.

[10] 5th Report, para. 29; Landa PSA, Articles 8.4 and 8.6.

[11] 6th Report, paras. 23-29 and 33-47.

[12] 6th Report, para. 25.

19. Prior to the Bid Deadline, the Monitor received two further bids: one (the "**129 Offer**") from 1296371 B.C. Ltd. ("**129**"); and one from Solterra.[13]

20. Mecario Reyes, a principal of the Petitioners, is also a director and officer of 129. The 129 Offer effectively amounted to a refinancing of the Petitioners' obligations by way of a new loan from 129 along with additional loans from two other entities (totalling approximately $22.5 million), one of which, Domain Mortgage Company ("**Domain**") is arm's-length. Domain's loan in the amount of $14.5 million was subject to a number of conditions, including raising funds from "private mortgage investors".[14]

21. The Solterra PSA was selected by the Monitor as the preferred offer, including because it was unconditional and supported by CMLS Financial Ltd. (" **CMLS**"), whereas the 129 Offer was not.[15]

22. On May 14, 2021, Solterra and the Monitor, on behalf of the Petitioners, executed the Solterra PSA. Among other things, the Solterra PSA included a provision as to confidentiality which reads, in part, as follows:

> **11.17 Confidentiality**. Except as may be required in the CCAA Proceedings, the parties will not disclose the existence of nor the contents of this Agreement to any third party… without the prior written consent of the other party, not to be unreasonably withheld, provided that such consent is not required in the case of disclosure required by law or disclosure by either party to enforce any of its rights under this Agreement or to obtain necessary consents under this Agreement…

23. Also on May 14, 2021, the Monitor advised Landa that it had received a Superior Offer (i.e. the Solterra PSA) and that it intended to seek approval of it.[16]

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[13] 6th Report, paras. 26, 29.

[14] Notice of Application of 129 dated May 21, 2021 ("**129 Application**"), paras. 17 and 20; Affidavit #2 of Macario Reyes, made May 21, 2021 ("**Reyes #2**"), at Exhibit "A", p. 7.

[15] 6th Report, para. 29.

[16] 6th Report, paras. 29, 30; Khatra #1, Exhibit "C", p. 61.

24. At some time after executing the Solterra PSA, and prior to the last hearing on May 25, 2021, the Monitor advised Landa as to the purchase price under the Solterra PSA.

25. On May 20, 2021: (a) the Petitioners filed the Solterra PSA Approval Application, returnable May 25, 2021; and (b) the Monitor filed the Sixth Report recommending that this Court approve the Solterra PSA.

26. On or about May 21, 2021, 129 circulated the 129 Application seeking various relief in support of the 129 Offer and Reyes #2.

27. On or about May 24, 2021, Landa delivered to the Monitor an improved offer to acquire the Terrace House Project (the "**Revised Landa Offer**"). The purchase price under the Revised Landa Offer is reportedly $850,000 more than the purchase price under the Solterra PSA,[17] representing an approximately 4% increase in the purchase price.[18]

28. On May 25, 2021, Landa circulated: (a) the Landa Application Response seeking an order that this Court direct the Petitioners to accept the Revised Landa Offer or, alternatively, direct a sealed bid process; and (b) Khatra #1, which purported to attach both the unredacted Landa PSA and the Revised Landa Offer.

29. On May 25, 2021, the Honourable Madam Justice Fitzpatrick: (a) ordered that the hearing of the Solterra PSA Approval Application and the 129 Application be adjourned to June 8, 2021; and (b) directed that: (i) interested parties were at liberty to submit further bids to the Monitor to be received by no later than 12:00 p.m. on June 4, 2021; and (ii) the Monitor prepare a confidential report in respect of the bids received.

Part 5: LEGAL BASIS

30. The preliminary issue is whether, as Solterra submits, the court should grant the order sought by the Petitioners in the Solterra PSA Approval Application. For the reasons set forth below, Solterra submits that is the only appropriate outcome, and that the court

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[17] Again, using Landa's own calculations.

[18] Landa Application Response, para. 13.

should decline to re-open the sale process and consider the Revised Landa Offer or any other offers submitted after the execution of the Solterra PSA (i.e. May 24, 2021).

31. Section 36 of the CCAA provides that a court may authorize the sale or disposition of a debtor company's assets outside the ordinary course of business on consideration of the non-exhaustive factors set out in Section 36(3).[19] These factors are consistent with and overlap many of the well-known considerations identified in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) ["***Soundair***"], including:

(a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers were obtained; and

(d) whether there has been any unfairness in the sales process.[20]

32. More generally, in analyzing whether a transaction should be approved, taking into consideration the Section 36(3) and *Soundair* factors, a court is to consider the transaction as a whole and whether or not the sale is appropriate, fair and reasonable.[21]

(I) The Revised Landa Offer should not be considered on this application.

33. In its response, Landa cites both *Soundair* and *Quest* for the above propositions, but then cites a trio of foreclosure cases, including *British Columbia v. A & A Estates Ltd.*, 2000 BCCA 317 ("***A&A***"), in support of its submission that the purchase price under the Revised Landa Offer "is substantially higher than the Solterra offer", which "suggests that the consideration under the Solterra offer is not reasonable and fair."[22]

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[19] CCAA, Section 36(3).

[20] *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) ["**Soundair**"]; *Quest University Canada (Re)*, 2020 BCSC 1883 ["***Quest***"], para. 176.

[21] *Quest*, para. 177, citing *Veris Gold Corp., Re*, 2015 BCSC 1204, at para. 23.

[22] Landa Application Response, Part 5, paras. 5, 6, 8, 9.

34. With respect, Landa's argument presumes without justification that the Revised Landa Offer meets the threshold to engage the court's discretion to scrutinize the sale process that produced the Solterra PSA. Moreover, Landa presumes that the court <u>must</u> re-open the sale process simply because the Revised Landa Offer was made, while offering no submissions as to why the sales process was deficient or whether and why the court should exercise its discretion to do so.

35. Where a late bid is submitted in the context of any court-supervised sale process, the court must in each case balance the competing interests of achieving the best sale price for an asset against safeguarding the efficacy and integrity of the sale process. The court's decision, in every case, involves a two-step process with a threshold first step:

(a) The first question for the court is whether the price under the late bid shows that the price contained in the original offer was so unreasonably low as to call into question the adequacy of the sales process.

(b) If the first question is answered in the affirmative, then the court will go on to consider whether, in the circumstances of the case, including the specific sale process approved by the court or its officer, it should exercise its discretion re-open the sale process, including to sealed bids.[23]

36. Obviously, where a late offer represents only a nominal or insignificant increase in the purchase price, the court will not consider that offer. However, even where the increased purchase price under a late offer is material, the court will not in every case re-open the sale process.

37. *Bank of Montreal v. Renuka Properties Inc.*, 2015 BCSC 2058 ["***Renuka***"] is illustrative. In this case, Mr. Justice Blok considered both *Soundair* and *A&A* on a bank's application to approve the sale of assets in a receivership that was opposed by prospective purchasers wishing to submit competing bids, one of which was 37% higher than the bank's offer.[24]

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[23] *Co-operative Housing Federation of Canada v. Bridlewood Co-operative Inc.*, 2012 ONSC 5936, para. 34; *Renuka*, para. 30.

[24] *Renuka*, para. 42.

38. While recognizing that *Soundair* required it to be cautious in deciding that the receiver had acted improvidently "merely because a later and higher bid is made", the court noted that: (a) as in *A&A*, "a disparity may be so great as to call into question the adequacy of the sale process"; and (b) only for such "limited purpose" may late offers be considered.[25] At 37% higher, the late bid met this threshold. Accordingly, Blok J. ordered sealed bids, holding that approving the recommended transaction in light of "substantial difference" between it and the competing bid would place "too high a premium on the deference factor" afforded to the receiver.[26]

39. This makes sense. If a late offer is submitted which is so significantly higher than the existing offer, the court will be minded to investigate whether the sale process leading to the existing offer was adequate. If it was not, then the court would, of course, be inclined to re-open the sale process. Such was the case in *Renuka*, where the court found that the presumptive purchaser had an advantage over the other bidders because it was owned by the former general manager, who had been used by the receiver to assist with the sale process, and the other bidders were unable to make up the disadvantage because it was a short sale process, i.e. three weeks.[27]

40. Conversely, in *Terrace Bay Pulp Inc., Re*, 2012 ONSC 4247 ["***Terrace Bay***"], Morawetz J. (as he then was) followed *Soundair* and approved the Monitor-supported sale of the CCAA debtor company's assets for $27 million in spite of opposition from a late bidder offering $35 million (an improvement of approximately 30%). Even in light of this disparity in bid prices, the court found that there was no "inference that the strategy employed by the Monitor was inadequate, unsuccessful, or improvident, nor that the price was unreasonable", and concluded that "the Receiver made a sufficient effort to get the best price, and did not act improvidently".[28]

41. Lastly, and of most relevance to the present case, in *Cox v. Seymour Village Management Inc.* 2015 BCSC 275 ["***Cox***"] Madam Justice Fitzpatrick approved an offer to purchase a

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[25] *Renuka*, para. 31, citing *Soundair* at paras. 26, 30. [Emphasis added].

[26] *Renuka*, paras. 41-43.

[27] *Renuka*, paras. 39 and 40.

[28] *Terrace Bay*, paras. 46, 52, 54, 55 and 65.

strata development over opposition by a late bidder that had submitted a prior bid under the sales process. While the offers in that case were different in many respects, the court approved the original, lower offer, noting that the difference between the two bids in the sense of the overall price was "nominal".[29]

42. In her decision, among other things, Fitzpatrick J. rejected the late bidder's argument that price was the "most important factor in the sales process" as being derived from a decision in a residential foreclosure which was distinguishable from the "unique situation" that drove the "very considerable and detailed sale process" before the court.[30]

43. Fitzpatrick J. also considered the other factors enumerated in *Soundair*, noting in relation to both the efficacy and integrity of the process and the fairness of the sale process that there was "no suggestion that [the late bidder] was not told what the sales process was or that it was not treated fairly in terms of having an opportunity to put its best foot forward." In considering whether the late bidder "should be allowed to have a second kick at the can", the court noted that while "is not completely unheard of that these late offers are considered; but where they are truly considered, in terms of price being the primary factor, is where there has been a substantial increase in price beyond the price that has been garnered through the sales process."[31]

44. Applying the foregoing to the present case, not only is the increase in the purchase price under the Revised Landa Offer insufficient so as to invite the court to scrutinize the sale process or the other factors enumerated in *Soundair*, even if it were it to do so, the court ought still to approve the Solterra PSA.

45. The purchase price under the Revised Landa Offer is only approximately 4% greater than the purchase price under the Solterra PSA. Whether or not one might describe that increase as "nominal" in the context of the overall purchase price, it does not suggest that the price under the Solterra PSA is unreasonable, or that the Monitor was improvident in

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[29] *Cox*, para. 30.

[30] *Cox*, para. 26.

[31] *Cox*, paras. 28 and 29.

accepting it. Accordingly, there is no reason for the court to further consider the Revised Landa Offer or re-open the sale process.

46. Nevertheless, if the court is minded to consider the factors set out in *Soundair*, each militates in favour of approving the Solterra PSA:

(a) There is no question that the Monitor made sufficient efforts to obtain the best price for the Terrace Project House, and did not act improvidently. There is no suggestion, let alone evidence, to the contrary, including from Landa. The sale process was bespoke and has been ongoing for over 10 months, and the Terrace House Project has been widely marketed. The Monitor even went so far as to initiate the Final Marketing Process to ensure that there were no prospective purchasers who might pay more than what was offered under the Landa PSA. The sale process was undertaken under the oversight of this court, and the Final Marketing Process was approved by this court.

(b) The court should in the circumstances of this case be particularly mindful of safeguarding the efficacy and integrity of the sale process, particularly the Final Marketing Process, which was unique, brief, embodied in an agreement with the late bidder, and approved by the court. Solterra was invited to participate in that process, and in the short time allowed submitted a Superior Offer.

There was no contemplation in the sale process set out in the Landa PSA or undertaken by the Monitor that further offers might be received after the conclusion of the Final Marketing Process, particularly from Landa, who itself agreed in the Landa PSA that the Final Marketing Process was to be carried out to solicit offers from "prospective purchasers that are not a party to this Agreement".

Deference should be given to the views of the court's officer as to the manner in which the Final Marketing Process operated. The Monitor has very clearly stated that it believed Landa was precluded from advancing any further offers.

To permit Landa to submit a further offer after the conclusion of the Final Marketing Process would be to ignore entirely any concerns regarding the efficacy and integrity of the court-supervised sale process. If ever there was a case where such concern supersedes the court's interest in securing the best price, this is it.

(c) As to whether there was any unfairness in the sales process, this case also has a unique feature (which relates as well to the efficacy and integrity of the process). Specifically, in this case, Landa was advised by the Monitor of the purchase price under the Solterra PSA because the Monitor expected the sale process to be concluded. The Monitor certainly did not expect that Landa could or would seek to submit a further bid.

The disclosure of the purchase price under the Solterra PSA will prejudice Solterra if the Solterra PSA is not approved. Not only did the disclosure enable Landa to submit what it knew to be a superior offer, but also, should sealed bids be considered, Landa has gained the advantage of knowing what Solterra's offer is. Had the expectation been that sealed bids would be ordered if the Monitor received a Superior Offer, then (as in foreclosure proceedings) Solterra's offer would not have been disclosed. Landa's subsequent offer might then have been less than that under the Solterra PSA.

At the time the Landa PSA and the Final Marketing Process were approved, there were only two fair means by which to proceed, either: (i) Landa was expressly permitted to submit a further offer, in which case Solterra's offer would have been kept confidential; or (ii) Landa was precluded from submitting a further offer, in which case Solterra's offer could have been disclosed. What is clearly unfair, and ought not to be countenanced, is the manner in which Landa has unilaterally decided to proceed, i.e. on the basis that it gets to submit a further offer <u>and</u> gets to know what Solterra's offer is.

(d) As to the interests of the parties generally, the court will note that the application to approve the Solterra PSA was brought by the Petitioners. They did not withdraw that application upon receipt of the Revised Landa Offer. CMLS was supportive of the Solterra PSA and no other lender or creditor objected to the approval of the Solterra PSA in advance of the last hearing. As for Landa, it can hardly object to approval of the Solterra PSA considering it agreed to the Final Marketing Process which elicited the offer, and it is to receive a substantial break fee on closing of the Solterra PSA.

(II) The Solterra PSA should be approved over the 129 Offer.

47. If the court accepts Solterra's position that there is no basis on which to re-open the sale process, the only remaining issue on the application is whether to approve the Solterra PSA over the 129 Offer.

48. The Monitor has unequivocally recommended that the court approve the Solterra PSA. Such recommendation was made with the 129 Offer in hand, and "based on the premise that the [Solterra PSA] was unconditional and supported by CMLS; whereas the [129 Offer] was not."[32] The Monitor has reasonably preferred the unconditional Solterra PSA rather than assuming the risk that the conditions under the 129 Offer may not be met.[33]

49. Further, deference must be given to the court's officer's commercial judgment, and its recommendations with respect to matters within the scope of its mandate ought to be adopted by the court in all but the most exceptional circumstances. This is particularly true in the context of court-ordered sales processes, which are at the core of a receiver's duties in most cases.[34]

50. Unless the receiver can be shown to have acted improvidently in carrying out the sale process or in recommending an offer for approval, there is no basis on which the court would decline to accept the receiver's recommendation. To do otherwise would reduce any sale process to a court auction and render prior negotiations meaningless.[35]

51. For the foregoing reasons, the Solterra PSA should be approved.

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[32] 6th Report, para. 29.

[33] *Sally Creek Environs Corp., Re*, [2003] O.J. No. 2652, para. 15, citing *Soundair*, and *Skyepharma PLC v. Hyal Pharmaceutical Corp.*, [1999] O.J. No. 4300.

[34] *Soundair*, para. 46; *Renuka*, para. 31.

[35] *Soundair*, para. 30; *Renuka*, para. 31.

Part 6: MATERIALS TO BE RELIED ON

1. Fifth Report of the Monitor, dated April 13, 2021;

2. Order Made After Application, granted April 16, 2021;

3. Sixth Report of the Monitor, dated May 20, 2021;

4. Notice of Application, filed May 20, 2021 (Solterra PSA Approval Application);

5. Notice of Application dated May 21, 2021 (129 Application);

6. Affidavit #2 of Macario Reyes, made May 21, 2021;

7. Application Response, filed May 25, 2021 (Landa Response); and

8. Such further and other materials as counsel for the Petitioners may advise and this Honourable Court shall permit.

The Application Respondent estimates that the application will take **2 hours.**

☑ Solterra has NOT filed in this proceeding a document that contains an address for service.

Solterra's ADDRESS FOR SERVICE is:

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Telephone: 604-631-4786

DocuSigned by:
Glen Nesbitt
4A0B70DD412E45F...

Dated: 03-Jun-2021

For: Signature of Kibben Jackson
Lawyer for Solterra Acquisitions Corp.

The Solicitors for the Application Respondent are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/326726.00001)

No. S205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

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

APPLICATION RESPONSE

Application response of: Centura Building Systems (2013) Ltd. ("**Centura**") and Solterra Acquisitions Corp. ("**Solterra**", and together with Centura, the "**Application Respondents**")

THIS IS A RESPONSE TO the Notice of Application of 1296371 B.C. Ltd. filed May 25, 2021 (the "**129 Notice of Application**").

Part 1:ORDERS CONSENTED TO

The Application Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: N/A.

Part 2: ORDERS OPPOSED

The Application Respondents oppose the granting of ALL of the orders set out in Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondents take no position on the granting of the orders set out in paragraphs N/A of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

1. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the 129 Notice of Application.

2. Centura is related to Solterra.

3. Centura has a claim against the Petitioner Port Capital Development (EV) Inc. in the amount of $473,277 relating to the supply of exterior precast panels for the Terrace House Project, and has filed a claim of builders lien against the Terrace House Project.[1]

4. 129 seeks orders facilitating a refinancing of a portion of the Petitioners' debt, including specifically by way of the assignment to the New Lenders of the CMLS Facility and the CMLS Security, and the amendment of such security to increase the amount secured thereunder and the rate of interest thereunder.

5. Specifically, 129 seeks orders:

   (a) authorizing the Petitioners and the New Lender to enter into agreements amending the CMLS Security such that it then secures all amounts owing from the Petitioners to the New Lenders; and

   (b) that the CMLS Security become a court-ordered charge which "shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge… and those claims contemplated by Section 11.8(8) of the CCAA."

6. Currently, there is less than $21.5 million owing to CMLS under the CMLS Facility and secured under the CMLS Security. The rate of interest under the CMLS Facility is prime plus 2.25% per annum.[2]

7. 129 is seeking to have the CMLS Security amended such that it will then secure approximately $25 million in principal with interest thereon at no less than 10.5% per annum, compounding monthly, or as much as 24% per annum, compounding monthly.[3]

8. While there is evidence that Aviva has entered into an agreement with the Petitioners and 129 by which Aviva has agreed that the Petitioners and the New Lenders can amend the

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[1] Affidavit #1 of Suzanne Volkow sworn June 8, 2021, Exhibit "A".

[2] Affidavit #1 of Macario Reyes sworn May 18, 2020, Exhibit "C".

[3] Affidavit #3 of Macario Reyes sworn June 4, 2021, Exhibit "A".

CMLS Security in the manner proposed, there is no evidence that any of the builders' lien claimants (or other creditors) have similarly agreed.

9. Centura opposes the relief sought by 129.

Part 5: LEGAL BASIS

1. 129 seeks relief that this court ought not grant. Specifically, 129 seeks orders that:

> 7. The purchase and assignment of the CMLS Loan and the CMLS Security by Domain, for and on behalf of the New Lenders (the "**Security Assignment**"), is hereby authorized and approved, and following completion of the Security Assignment, the Petitioners are authorized, empowered and directed to execute and deliver such amending agreements or other documents as may be reasonably required by the New Lenders (collectively, the "**Amending Agreements**") to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders.
>
> 8. The CMLS Security, as amended by the Amending Agreements, shall constitute a mortgage, security interest, assignment by way of security and charge on the "**Property**" (as defined in the ARIO) and such charge shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge (as defined in the ARIO) and those claims contemplated by Section 11.8(8) of the CCAA.

2. Practically, the court is being asked to create new, first-ranking security in favour of the New Lenders which secures approximately $25 million in principal at differing rates, but not less than 10.5% per annum, compounded monthly, and as much as 24% per annum, compounded monthly. Presently, the CMLS security secures less than $21.5 million and the interest rate is prime plus 2.25% per annum.

3. Let there be no mistake: 129 is not seeking an order simply authorizing the assignment of debt and security. Rather, it is seeking an order creating a court ordered charge on all of the Property ranking ahead of all other encumbrances other than the Administration Charge. That court-ordered charge would secure $3.5 million more than what is currently secured under the CMLS Security and at rates from approximately 6% to as much as approximately 20% per annum more than the current security in favour of CMLS.

4. 129 is seeking the aforementioned order and related relief on the basis of section 11 of the CCAA, which permits the court to "make any order that it considers appropriate in the circumstances."

5. With respect, while the court may have the jurisdiction to make the order sought by 129, it ought not to exercise its discretion to make such an order.

6. Simply put, the CCAA does not contemplate a debtor company – or any other party – obtaining a court order permitting or directing the debtor company to undertake any

restructuring transaction without the consent of affected creditors. That, in essence, is what 129 seeks to do.

7. After the initiation of a CCAA proceeding, there are two possible outcomes:

(a) The assets of the debtor company (or, in the case of a reverse vesting order, its shares) are conveyed to a purchaser. In this instance, the debtor company (or its shareholders) retain no further interest in the assets. Secured creditors' interests are vested off by court order and proceeds of sale are distributed to creditors in order of priority.

This outcome can be achieved either as part of a plan of arrangement put to the debtor company's creditors for approval, or by way of a court order.

(b) The debtor company retains an interest in its assets, either because it is able to pay its creditors in full or because its creditors have agreed, individually or as part of a class voting on a plan of arrangement, to have their rights compromised.

8. The outcome urged upon this court by 129 is not one contemplated by the CCAA, namely, the debtor company retaining its interest in its assets without the agreement of creditors whose rights are being compromised. In this case, it is proposed that encumbrancers of the Terrace House Project be subordinated to new financing that is approximately $3.5 million more than the financing they were subordinated to upon the initiation of these proceedings without the opportunity for any consultation, let alone their approval.

9. There is no doubt that 129 seeks orders that will have the effect of compromising or confiscating the rights of the builders lien claimants, in this case by subordinating them to new financing. While the Petitioners could, in the ordinary course, agree with CMLS (or the assignee of its security) to amend its security in order to secure a greater amount at higher rates, such modifications would be ineffective as against subsequent encumbrancers, including lien claimants.[4]

10. 129 requires orders of this court in order to implement the restructuring transactions in the face of the subsequent encumbrancers' (i.e. lien holders) rights. The confiscation of those rights is, by definition, a "plan of arrangement".[5] Where there is a plan of arrangement, the court cannot sanction it unless it has been approved by the requisite majorities of the company's creditors.[6]

11. 129 seeks to simply do away with the need for creditor approval.

12. It is not sufficient for 129 (or anyone else) to say that the orders sought are appropriate simply on the basis that the alternative is a transaction whereby all of the creditors' interests are vested off in any event. This is so for two reasons:

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[4] *Land Title Act*, R.S.B.C. 1996, c. 250, sections 1 and 206.

[5] *9354 – 9186 Quebec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 102.

[6] *Calpine Canada Energy Ltd., Re*, 2007 ABQB 504 at para. 41.

(a) That argument could be applied in effectively every restructuring scenario proposed by a debtor. There is no difference in the debtor presenting to the court a plan to compromise creditors' claim at 10 cents on the dollar and asking the court to bless it without a vote of the creditors "because the alternative is those creditors will get nothing". In either scenario, creditors' rights are being compromised for the debtors' benefit without them having any say in the matter.

(b) Relating to the foregoing, it is entirely conceivable that the builders lien claimants would prefer that a new developer acquire the Terrace House Project and complete it, even if their lien claims are vested off title. In many cases, suppliers have leverage aside from their lien claims, including because they are required to sign off on completion for engineering reports and permits, or because their work is sufficiently advanced that hiring a replacement is economically impractical.

13. There is no doubt that in the context of a CCAA proceeding creditors' rights are limited. That is not to say they may be disregarded completely. Where the debtor company seeks orders of the court authorizing a restructuring transaction which necessarily compromises creditors' rights – let alone an order creating a charge in priority to those creditors – at the very least those creditors are entitled to agree whether to have their rights compromised.

14. This facts of this case are almost entirely similar to those in *Cliffs Over Maple Bay.*[7] In that case, on the comeback hearing the debtor company sought an extension of the stay of proceedings and authorization to borrow $2,350,000 by way of interim financing. The application was opposed by the secured lender. The court granted the orders sought, but was overturned on appeal.

15. In his decision, Tysoe J.A. held as follows:

> 31 The filing of a draft plan of arrangement or compromise is not a prerequisite to the granting of a stay under s. 11: see *Fairview Industries Ltd., Re* (1991), 109 N.S.R. (2d) 12, 11 C.B.R. (3d) 43 (N.S. T.D.). In my view, however, a stay should not be granted or continued if the debtor company does not intend to propose a compromise or arrangement to its creditors...
>
> ...
>
> 35 It was not suggested in the petition, nor in the Monitor's report before the chambers judge at the comeback hearing, that the Debtor Company intended to propose an arrangement or compromise to its creditors before embarking on its restructuring plan. In my opinion, in the absence of such an intention, it was not appropriate for a stay to have been granted or extended under s. 11 of the CCAA...
>
> ...
>
> 38 I wish to add that it was open, and continues to be open, to the Debtor Company to propose to its creditors an arrangement or compromise along the

[7] *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 ("***Cliffs Over Maple Bay***").

> lines of the restructuring plan described in paragraph 47 of the petition, although it may be a challenge to make such a plan attractive to its creditors. The creditors could then vote on such an arrangement or compromise which would involve, on their part, the concession that their rights would remain frozen while the Debtor Company carried out its restructuring. What the Debtor Company was endeavouring to accomplish in this case was to freeze the rights of all of its creditors while it undertook its restructuring plan without giving the creditors an opportunity to vote on the plan. The CCAA was not intended, in my view, to accommodate a non-consensual stay of creditors' rights while a debtor company attempts to carry out a restructuring plan that does not involve an arrangement or compromise upon which the creditors may vote.
>
> [Emphasis added]

16. There is no distinction between what the debtor company proposed in *Cliffs Over Maple Bay* and what 129 is proposing in this case. Notably:

    (a) There is no suggestion anywhere in Mr. Reyes' Affidavits #2, #3 or #4 that 129, the Petitioners or any other party intends to put forward a plan of arrangement or compromise on which the Petitioners' creditors may vote.

    (b) What 129 is proposing is exactly what the Court warned against in *Cliffs Over Maple Bay*, namely freezing the rights of creditors while the Petitioners: (i) seek to secure additional "interim working capital" from their current investors and new third party investors; and (ii) "new construction financing that will allow the Petitioners to repay the New Loan Facility and exit *CCAA* proceedings."[8]

17. 129 is seeking nothing more than to use these *CCAA* proceedings to effect financings that are otherwise unavailable to the Petitioners. In essence, 129 is proposing simply that the Petitioners continue to simply borrow their way out of their current financial difficulties. That is not a restructuring, and it is not in keeping with the purpose of the *CCAA*.

18. With respect, to authorize the transactions and grant a super-priority charge to secure new financing as proposed by 129, all without providing creditors the opportunity to vote on a plan, would be contrary to the purpose of the *CCAA* and the relevant authorities.

19. For the foregoing reasons, the application of 129 should be dismissed.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Macario Reyes sworn May 18, 2020;

2. Affidavit #2 of Macario Reyes sworn May 21, 2021;

3. Affidavit #3 of Macario Reyes sworn June 4, 2021;

4. Affidavit #4 of Macario Reyes sworn June 7, 2021;

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[8] 129 Notice of Application, paras. 27-34 under "Restructuring Plan".

5. Affidavit #1 of Suzanne Volkow sworn June 8, 2021; and

6. Such further and other material as counsel may advise and as this Honourable Court deems admissible.

The Application Respondent estimates that the application will take 90 minutes.

The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Dated: 08-Jun-2021

Signature of Kibben Jackson
Lawyer for Application Respondent

The Solicitors for Solterra Acquisitions Corp. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/326726.00001)

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

BEFORE	)	THE HONOURABLE MADAM JUSTICE FITZPATRICK	)	15 / JUNE /2021

ON THE APPLICATION of 1296371 B.C. Ltd. ("**129**"), coming on for hearing at Vancouver, British Columbia by MS Teams, on May 25, June 8 and 11, 2021 and on hearing Jordan Schultz and Eamonn Watson, counsel for 129, and those other counsel that are signatories hereto, and with written reasons for judgment to follow;

THIS COURT ORDERS that the application of 129 is dismissed.

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

Signature of Jordan Schultz
Lawyer for 1296371 B.C. Ltd.

BY THE COURT

REGISTRAR
ENDORSEMENTS ATTACHED

NO. S-205095
VANCOUVER REGISTRY

Signature of David Gruber
Lawyer for the Petitioners

Signature of Peter Rubin
Lawyer for the Monitor, Ernst & Young Inc.

Signature of Colin D. Brousson
Lawyer for CMLS Financial Ltd. and
Desjardins Financial Security Life Assurance Company

Signature of William Roberts
Lawyer for Aviva Insurance Company of Canada

Signature of Scott A. Turner
Lawyer for Landa Global Acquisitions Ltd.

Signature of Kibben Jackson
Lawyer for Solterra Acquisitions Corp. and
Centura Building Systems (2013) Ltd.

Signature of Alan Frydenlund
Lawyer for Domain Mortgage Corp.

By the Court.

Registrar

ENDORSEMENTS ATTACHED

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Lawyer for Solterra Acquisitions Corp. and
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Lawyer for Domain Mortgage Corp.

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Lawyer for Solterra Acquisitions Corp. and
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Lawyer for Domain Mortgage Corp.

By the Court.

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Lawyer for Aviva Insurance Company of Canada

Signature of Scott A. Turner
Lawyer for Landa Global Acquisitions Ltd.

for: Signature of Kibben Jackson
Lawyer for Solterra Acquisitions Corp. and
Centura Building Systems (2013) Ltd.

Signature of Alan Frydenlund
Lawyer for Domain Mortgage Corp.

By the Court.

Registrar

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Lawyer for Domain Mortgage Corp.

By the Court.

Registrar

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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

DENTONS CANADA LLP
BARRISTERS & SOLICITORS
250 Howe Street, 20th Floor
Vancouver, BC V6C 3R8
Attention: Jordan Schultz

File No. 568308-333

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No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

IN THE MATTER OF A PLAN 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 A
MADAM JUSTICE FITZPATRICK	)	~~23~~/June/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the ~~23rd~~ 8th + 10th days of June 2021; AND ON HEARING David Gruber, + K. Amand A 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

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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 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.

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(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;

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(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;

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(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;

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(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.

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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

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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

(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];

(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

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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;

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(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

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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 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.

WB

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

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

(Initial Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	29/MAY/2020
	)	

THE APPLICATION of the Petitioners coming on for hearing via telephone conference, on the 29th day of May, 2020 (the "**Order Date**"); AND ON HEARING David E. Gruber and Alexandra Andrisoi, counsel for the Petitioners and those other counsel and parties listed on Schedule "A" hereto all attended via telephone; AND UPON READING the material filed, including the First Affidavit of Macario (Tobi) Reyes sworn May 18, 2020 and the consent of Ernst & Young, Inc. ("**EY**") to act as Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. Port Capital Development (EV) Inc. ("**Port Capital GP**") is a company to which the CCAA applies. Pursuant to s. 11 of the CCAA, Evergreen House Development Limited Partnership (together with Port Capital GP, the "**Petitioners**") shall enjoy the benefits of the protections and authorizations provided in this Order, and shall be subject to the same restrictions hereunder.

SUBSEQUENT HEARING DATE

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 10:00 a.m. on Monday, the 8th day of June 2020 or such other date as this Court may order.

PLAN OF ARRANGEMENT

3. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, including for clarity the Enhanced Monitor’s Powers provided herein, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts,

accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

(a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and

(b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:

(i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;

(ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and

(iii) any related corporate matters.

6. Except as otherwise provided herein, including for clarity the Enhanced Monitor's Powers provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding $5,000.00 shall be approved by the Monitor;

(b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

(c) fees and disbursements of the kind referred to in paragraph **[5(b)]** which may be incurred after the Order Date.

7. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

8. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

9. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except as authorized by this Order;

(b) to make no payments in respect of any financing leases which create security interests;

(c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;

(d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and

(e) to not incur liabilities except in the ordinary course of Business.

10. Notwithstanding paragraph **9**, the Petitioners are permitted, with the consent of the Monitor, to make regular payments under all mortgages granted by the Petitioners due and after the Order Date.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

(a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding $10,000.00 in any one transaction or $100,000.00 in the aggregate. If the disposition of assets exceeds these quantums, the Petitioners shall seek the approval of the Monitor, and if the Monitor deems appropriate, the approval of the Court for such dispositions;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate;

(c) pursue all avenues of refinancing for their Business or Property, in whole or part; and

(d) with the approval of the Court, and subject to this Order and any further Order, including for clarity the Enhanced Monitor's Powers provided herein, and on notice to (i) CMLS Financial Ltd. ("**CMLS**"), (ii) Aviva Insurance Company of Canada ("**Aviva**") and (iii) the pre-sale purchasers, deliver a notice of disclaimer or notice of termination of any pre-sale purchase and sale agreements for real property owned by the Petitioners (the "**Pre-Sale Contracts**") pursuant to Section 32 of the CCAA, all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If a Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*,

S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including June 8, 2020, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners, or Port Capital Development Inc. or Macario (Tobi) Reyes solely in their capacities as a guarantor, covenantor, indemnifier or similar capacity of any of the Petitioners' debts or liabilities, or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs **15** and **16**, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as

may be required by the Petitioner, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

APPOINTMENT OF MONITOR

22. EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) assist the Petitioners in sourcing debtor-in-possession financing, and advising the Petitioners in relation thereto;

(b) monitor the Petitioners' receipts and disbursements;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(d) advise the Petitioners in their preparation of the Petitioners' cash flow statements;

(e) advise the Petitioners in their development of the Plan and any amendments to the Plan;

(f) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

24. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. The Monitor shall provide any creditor of the Petitioners with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners are confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ENHANCED MONITOR POWERS

28. The expansion of the Monitor's powers set forth below is hereby authorized and approved on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers and duties of the Monitor provided for above and in the CCAA.

29. In addition to the powers and duties of the Monitor set forth above, and without altering in any way the limitations and obligations of the Petitioners arising under this Order and by virtue of the institution of these proceedings, the Monitor is hereby authorized and empowered to:

(a) monitor the activities of any senior officer of the Petitioners in place at the time of this Order or who may be appointed by any subsequent orders of this Court;

(b) receive, collect and take possession of all monies and accounts now owed or hereinafter owing to any of the Petitioners, including without limitation refunds, management fees, dividends, distributions, rents, proceeds payable pursuant to a sale of any of the Petitioners' assets, and any other amounts payable to the Petitioners;

(c) take control of any and all accounts of the Petitioners, including accounts with financial institutions, and take all required acts with any financial institution to facilitate the Monitor's control of such accounts, including changing the signing authority on such accounts to such persons as the Monitor, in its sole discretion, deems appropriate, or, if deemed necessary by the Monitor, open one or more new accounts with any financial institution in the Monitor's own name (collectively the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds from the Petitioners as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties as set out herein, provided that the monies standing to the credit of the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, or any other order to be made by the Court in these proceedings;

(d) oversee and consent to any disbursement or payment required in respect of the Property or the Business, including capital expenditure or other expenditure relating to the preservation or protection of any of the Property and any disbursement or payment made under any order in these proceedings, or, if deemed necessary or appropriate by the Monitor in its sole discretion, make use of funds in the Monitor's Accounts from time to time to make any disbursements or payments for and on behalf of the Petitioners or in connection with the Monitor's exercise of its powers and duties set out herein;

(e) oversee and assist in the preparation of cash flow statements of the Petitioners and assist in the dissemination of financial and other information in these proceedings to those interested parties that, in the Monitor's discretion in consultation with the Petitioners, and in consideration of confidentiality concerns, ought to receive such information, including the delivery of monthly current rent rolls to mortgagees with interests in rental property;

(f) review and investigate the books and records of the Petitioners as necessary to enable the Monitor to exercise and discharge its powers and duties set out herein;

(g) be entitled to rely on the books and records of the Petitioners without independent investigation, unless otherwise ordered by the Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(h) conduct a review of the Petitioners' intercorporate accounts with all affiliates of the Petitioners and any entities managed by the Petitioners that are not Petitioners herein and:

(i) take any steps necessary in the Monitor's discretion to prevent any of the Petitioners' monies being transferred to affiliates of the Petitioners, any entities managed by the Petitioners, or any other party in the opinion of the Monitor as appropriate; and

(ii) file a report with the Court regarding same, including any recommendations by the Monitor as to how such intercorporate accounts, or the Petitioners' interests therein, should be dealt with;

(i) on behalf of the Petitioners or on its own behalf, engage such employees or former employees of the Petitioners and such consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, that the Monitor deems, at is sole discretion, to be necessary or appropriate to assist the Monitor with the exercise of the powers and duties conferred by this Order, including, without limitation, a chief restructuring officer and a project manager;

(j) if deemed necessary or appropriate by the Monitor in its sole discretion, subject to such requirements as are imposed by the CCAA, to cause the Petitioners to:

(i) permanently or temporarily cease, downsize or shut down all or any part of the Petitioners' Business or operations;

(ii) terminate the employment of such of the Petitioners' employees or temporarily lay off such of the Petitioners' employees as the Monitor deems appropriate; and

(iii) deliver, pursuant to Section 32 of the CCAA, a notice of disclaimer or notice of termination of any lease or agreement other than Pre-Sale Contracts;

(k) subject to paragraph **30**, with respect to the Pre-Sale Contracts pursuant to paragraph 11(d) of this Order, to determine whether such Pre-Sale Contracts are deemed by the Monitor in its discretion, but in consultation with the Petitioners, CMLS and Aviva, to be in default (the "**Defaulted Pre-Sale Contracts**"), and in the event the Monitor so determines, to seek directions of the Court as to whether such Pre-Sale Contracts ought to be disclaimed, and in the event such Pre-Sale Contracts are disclaimed:

(i) collect the forfeited deposit monies in connection with the Defaulted Pre-Sale Contracts (the "**Forfeited Deposits**"); and

(ii) hold the Forfeited Deposits in trust, subject to the specific security of CMLS and Aviva (subject to the existing priorities as between those parties), pending the results of the SISP or alternatively the Restructuring, and failing CMLS being fully paid via a sale under the SISP or other Restructuring on or before August 31, 2020, these Forfeited Deposits shall be paid to CMLS or Aviva, as the case may be, and applied against the Petitioners' debt owing to CMLS or Aviva, as the case may be;

(l) implement the sales and investment solicitation plan (the "**SISP**") attached hereto as **Schedule** "**B**";

(m) with the consent of CMLS, seek approval of the Court for a sale of all or any part of the Property following the conclusion of the timelines set out in the SISP; and

(n) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred upon the Monitor by this Order or any further order of the Court.

30. Notwithstanding the Monitor's discretion to determine whether Pre-Sale Contracts are in default, CMLS and/or Aviva are at liberty to:

(a) oppose the Monitor's application for directions as to whether such Pre-Sale Contracts ought to be disclaimed; and

(b) to bring an application seeking a declaration of this Court that any Pre-Sale Contract is in default, and in the event the Court declares any Pre-Sale Contract is in default, then the provisions of paragraphs 29(k)(i) and 29(k)(ii) of this Order shall apply.

31. No provision of this Order is intended, or shall be deemed to appoint the Monitor as an officer, director or employer of any of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners. Any distribution made to creditors of the Petitioners or any other Person in accordance with the terms of this Order and any other orders of this Court in these proceedings will be deemed to have been made by the applicable Petitioner and not the Monitor.

32. The Petitioners and their current and former shareholders, officers, directors, employees, agents and representatives shall cooperate fully with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other order of this Court.

ADMINISTRATION CHARGE

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amount[s] of $50,000.00 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

34. Counsel to the Petitioners, the Monitor and its legal counsel shall be careful to differentiate their accounts in this CCAA from time spent in other insolvency matters for related entities to the Petitioners and shall pass their accounts from time to time, and for this purpose the accounts of the Petitioners, the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

35. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $250,000.00, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs **36** and **38** hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. The Administration Charge (to the maximum amount of $250,000.00) shall have first priority over any other charge, if any, created by this Order. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge shall not be

required, and that the Administration Charge shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Administration Charge coming into existence, notwithstanding any failure to file, register or perfect any such Administration Charge.

37. The Administration Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

38. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Administration Charge, unless the Petitioners obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge.

39. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Petitioners of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge;

(c) the payments made by the Petitioners pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

40. THIS COURT ORDERS that any Administration Charge created by this Order over leases of real property in Canada shall only be an Administration Charge in the Petitioners' interest in such real property leases.

SERVICE AND NOTICE

41. The Monitor shall (i) without delay, publish in the *Vancouver Sun* newspaper a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

42. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

43. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.ey.com/ca/terracehouse

44. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.ey.com/ca/terracehouse

45. Notwithstanding paragraphs **42** and **44** of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

46. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

47. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

48. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order,

to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

49. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

50. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

51. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

52. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

53. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

54. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

55. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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 E. Gruber
Lawyer for the Petitioners

BY THE COURT

Digitally signed by Fitzpatrick, J

Digitally signed by Mohammed, Kazim

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd.
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor
Vicki Tickle	Urban One Builders CM Inc. Doka Canada Ltd. Centura Building Systems (2013) Ltd. Glastech Glazing Contractors Ltd. Cairns Electric Ltd. Two Pillars Construction Ltd.

Schedule "B"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

Pursuant to a Companies' Creditor Arrangement Act, R.S.C. 1985, c. C – 36 ("**CCAA**") initial order (as may be amended from time to time, the "**Initial Order**") of the Supreme Court of British Columbia (the "**Court**") dated May 29, 2020 in Action No. VLC-S-S-205095, Vancouver Registry (the "**CCAA Proceeding**") in regard to Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (collectively the "**Debtor**"), Ernst & Young, Inc. was appointed as monitor (in such capacity, the "**Monitor**") in the CCAA Proceeding and was granted certain Enhanced Monitor's Powers (as defined in the Initial Order) including the power to implement the Sale and Investment Solicitation Plan set out herein (the "**SISP**") with regard to the assets of the Debtor being chiefly the development property having a legal description of PID: 006-721-397 Lot 18, Except that part of the Canadian Pacific Railway Right-of-Way as described in Absolute Fee Parcel Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92 and the Debtor.

Accordingly, the Monitor intends to conduct this SISP in consultation with CMLS Financial Ltd. and Aviva Insurance Company of Canada (collectively, the "**Secured Creditors**") and the Debtor. The SISP is intended to solicit interest in a sale of, or investment in, the assets and/or the businesses of the Debtor.

Pursuant to the SISP, all qualified interested parties will be provided with an opportunity to participate in the SISP.

OPPORTUNITY AND SISP SUMMARY

1. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Debtor's business and the Property (the "**Opportunity**").

2. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:

   (a) the sale of the Property (as defined in the Initial Order). Interested parties may submit proposals to acquire all, substantially all or a portion of the Property of the Debtor (a "**Sale Proposal**"); and

   (b) the investment in the business operations (the "**Business**") of the Debtor on a going concern basis. Such proposals may take the form of an investment in or proposals to restructure, reorganize or refinance the Business (an "**Investment Proposal**").

3. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Sale Proposal or any Investment Proposal will be on an "*as is, where is*" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor or any of its affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

4. As described more fully in this SISP, the major stages in the SISP will be comprised of the following:

(a) Pre-Marketing: preparation of all marketing material, assembly of all relevant due diligence material, establishment of an electronic data room and preparation of potential buyer/investor lists;

(b) Marketing: advertising, contacting potential buyers/investors, responding to requests for information and disseminating marketing material to potential buyers and investors; and

(c) Offer Submission and Evaluation: solicitation, receipt of, evaluation and negotiation of offers from potential buyers and investors, as described below.

5. The offer submission and evaluation stage of the SISP will be comprised of a two Phase offering process: "**Phase 1**" being the submission of non-binding asset purchase agreements or investment agreements ("**Agreements**") from qualified bidders, and "**Phase 2**" being the submission of a binding offer from those parties that submitted non-binding Agreements and have been invited by the Debtor to participate in Phase 2 (defined below as Phase 1 Qualified Bidders).

TIMELINE

6. The following table sets out the target dates under the SISP:

Target Dates	Target Dates
Phase 1 Non-Binding Bid Deadline	July 10, 2020
Phase 2 Binding Bid Deadline (or Auction Date)	August 7, 2020
Court Approval Date (subject to Court availability)	August 25, 2020
Outside Closing Date	August 31, 2020

7. The target dates set forth above may be adjusted in the sole discretion of the Monitor after consultation with the Secured Creditors and the Debtor.

PRE-MARKETING STAGE

8. As soon as reasonably practicable:

(a) The Monitor will solicit and consider marketing proposals from commercial real estate agents (an “**Agent**”) for the marketing of the Property and negotiate, accept or reject any of such proposals in consultation with the Secured Creditors and the Debtor. For clarity, in consultation with the Secured Creditors and the Debtor the Monitor may reject all such proposals and choose to market the Property directly;

(b) the Monitor or its Agent (if any) will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and its counsel (an "**NDA**"); and (iii) a confidential Information Memorandum ("**CIM**"). The CIM will specifically stipulate that the Monitor makes no representation or warranty as to the accuracy or completeness of the information contained in the CIM, the Data Room (as defined below), or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Monitor;

(c) the Monitor, with the assistance of the Debtor, will gather and review all required due diligence material to be provided to interested parties and shall establish a secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Monitor during the SISP;

(d) the Monitor, in consultation with the Secured Creditors and the Debtor, will develop a draft form of asset purchase agreement and draft form of investment agreement (collectively, the "**Agreement Form**"); and

(e) the Monitor or its Agent (if any), will prepare a list of potential bidders, including: (i) parties that have approached the Debtor, the Monitor or the Agent (if any) indicating an interest in the Opportunity; and (ii) local, national and international strategic and financial parties who the Monitor or the Agent (if any) believe may be interested in purchasing all or part of the Business and Property or investing in the Debtor pursuant to the SISP (collectively, "**Known Potential Bidders**").

MARKETING STAGE

9. The Monitor or its Agent (if any) will arrange for a notice of the SISP (and such other relevant information as the Monitor considers appropriate) (the "**Notice**") to be published in the real estate section of the Globe and Mail (National Edition), and any other newspaper or journals as the Monitor considers appropriate, if any.

10. The Monitor or its Agent (if any) will send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice or otherwise requests such documents as soon as reasonably practicable after such request or identification, as applicable.

11. The Monitor or its Agent (if any) will send the CIM and grant access to the Data Room to those parties who have executed and delivered the NDA to the Monitor or its Agent (if any).

12. Requests for information and access will be directed to a designated representative of the Monitor or the Agent (if any). Without limiting the terms of the NDA, all printed information shall remain the property of the Monitor or the Debtor as the case may be and, if requested by the Monitor, shall be returned without further copies being made and/or destroyed with an acknowledgement that all such material has either been returned and/or destroyed and no electronic information has been retained.

13. Any party who expresses a wish to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM and access to the Data Room, provide to the Monitor and the Debtor an NDA executed by it, and which shall inure to the benefit of any ultimate Successful Bidder, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.

14. If it is determined by the Monitor in consultation with the Secured Creditors and the Debtor and in the Monitor’s reasonable business judgment that a Potential Bidder: (i) has delivered the documents contemplated in paragraph 13 above then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**".

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1: Non-Binding Agreement

Submission Phase

15. At any time prior to the Phase 1 Bid Deadline, the Monitor, in consultation with the Secured Creditors and the Debtor may in their reasonable business judgment, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.

16. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Monitor.

17. Phase 1 Qualified Bidders who advise the Monitor or its Agent (if any) that they wish to submit an offer will be provided with a copy of the Agreement Form.

18. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an Agreement to the Monitor or its Agent (if any) at the addresses which will be Debtor and the specified in the Teaser Letter, so as to be received by not later than 5:00 PM (Vancouver time) on or before **July 10, 2020**, or such later date as the Monitor may determine after consultation with the Secured Creditors and the Debtor (the "**Phase 1 Bid Deadline**"). If the Phase 1 Bid Deadline is extended by the Monitor, it shall provide notice of such extension and the revised Phase 1 Bid Deadline to each Phase 1 Qualified Bidder.

19. An Agreement submitted in accordance with above paragraph will be considered a qualified Agreement (a "**Qualified Agreement**") only if:

    (a) it is submitted on or before the relevant Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) in the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and any assumptions supporting the valuation;

        (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

        (iii) a specific indication of the financial capability, together with evidence of such capability, of the Phase l Qualified Bidder and the expected structure and financing of the transaction;

        (iv) a description of the conditions and approvals required for a final and binding offer;

        (v) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

        (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

    (c) in the case of an Investment Proposal, it identifies or contains the following:

        (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;

        (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or in the Debtor in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;

(v) a description of the conditions and approvals required for a final and binding offer;

(vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;

(vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(d) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Debtor and/or the Sale Advisor from time to time.

20. The Monitor may, in consultation with the Secured Creditors and the Debtor waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified Agreement. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

21. Following the Phase 1 Bid Deadline, the Monitor will, in consultation with the Secured Creditors and the Debtor, assess the Qualified Agreements. If it is determined by the Monitor that a Phase 1 Qualified Bidder that has submitted a Qualified Agreement (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a "**Phase 2 Qualified Bidder**", provided that the Monitor may, in its reasonable business judgment, in consultation with the Secured Creditors and the Debtor, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

22. As part of the assessment of Qualified Agreements and the determination of the process subsequent thereto, the Monitor, in consultation with the Secured Creditors and the Debtor, shall determine the process and timing to be followed in pursuing Qualified Agreements based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified Agreements received; (ii) the extent to which the Qualified Agreements involve Investment Proposals or Sales Proposals; (iii) the scope of the Property or Business to which any Qualified Agreements may relate; and (iv) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to the Property, all provided that in the event that, prior to the determination of the manner of proceeding to Phase 2 of the SISP, the Monitor or the Debtor has received a proposal to refinance the secured debt owing to CMLS Financial Ltd. satisfactory to CMLS Financial Ltd. then the Monitor may determine to discontinue the SISP upon completion of such refinancing.

23. Upon the determination by the Monitor of the manner in which to proceed to Phase 2 of the SISP, and provided that the SISP is not discontinued, the Monitor will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

24. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter, the Monitor may, in consultation with the Secured Creditors and the Debtor, at any time bring an application to seek approval of a stalking horse asset purchase agreement or investment proposal in respect of some or all of the Property or Business and related bid procedures in respect of such Property or to establish further or other procedures for the SISP.

Due Diligence

25. The Monitor shall in its reasonable business judgment and subject to competitive and other business considerations, afford each Phase 2 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as they deem appropriate. Due diligence access may further include management presentations, on-site inspections, and other matters which a Phase 2 Qualified Bidder may reasonably request and to which the Monitor and/or Debtor, in their reasonable business judgment, may agree. The Monitor and Debtor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 2 Qualified Bidders and the manner in which such requests must be communicated. Neither the Monitor nor the Debtor will be obligated to furnish any information relating to the Property or Business to any person. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.

Phase 2: Formal Offers and Selection of Successful Bidder

26. Paragraphs 27 to 39 below and the conduct of Phase 2 bidding are subject to paragraphs 21 to 24, above, and any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

Formal Binding Offers

27. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Debtor or its Property and Business shall submit to the Monitor or its Agent (if any) a binding offer at the addresses specified in the Bid Process Letter, so as to be received by not later than 5:00 PM (Vancouver Time) on **August 7, 2020**, or such later date as the Monitor may determine after consultation with the Secured Creditors and the Debtor (the "**Phase 2 Bid Deadline**"). If the Phase 2 Bid Deadline is extended by the Monitor, it shall provide notice of such extension and the revised Phase 2 Bid Deadline to each Phase 2 Qualified Bidder. The binding offer shall comply with all of the following requirements:

    (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified Agreements;

    (b) cash is the preferred form of consideration, but if the bid utilizes other consideration, a description of the material terms of the consideration shall be provided;

    (c) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Monitor;

(d) unless otherwise agreed, the bid shall be set forth in a duly authorized and executed transaction agreement in the Agreement Form and shall include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;

(e) the bid shall set forth the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and the name or names of the ultimately beneficial owner(s) of the Phase 2 Qualified Bidder including their respective percentage interests;

(f) to the extent that a bid is conditional upon new or amended agreements being entered into with other parties, the Qualified Phase 2 Bidder shall provide the proposed terms of such amended or new agreements and identify how such agreements may differ from existing agreements to which the Debtor may be a party. A Phase 2 Qualified Bidder's willingness to proceed without such conditions and, where such conditions are included in the bid, the likelihood of satisfying such conditions, shall be an important factor in evaluating the bid;

(g) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction that will allow the Monitor, in consultation with the Secured Creditors and the Debtor, to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;

(h) the bid should not be conditioned on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder;

(i) for a Sales Proposal or an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the purchase price or investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, which shall be paid to the Monitor in trust (the "**Deposit**"). The Deposit shall be submitted upon the Phase 2 Qualified Bidder being selected as the Successful Bidder. The Successful Bidder's Deposit shall be applied as against the Purchase Price;

(j) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and the Debtor prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 2 from the Phase 2 Qualified Bidder); (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Monitor or any of its employees, representatives, agents or advisors, whether express, implied, statutory or otherwise, regarding the Business, Property, or the Debtor or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor;

(k) all required corporate approvals of the Phase 2 Qualified Bidder have been obtained prior to the submission of the bid;

(l) the bid shall identify any material conditions in favour of the purchaser to be resolved prior to closing the transaction;

(m) the bid is received by the relevant Phase 2 Bid Deadline; and

(n) the bid contemplates a schedule for closing the transaction set out therein which is on or before August 31, 2020**,** which date may be extended by the Monitor in its discretion, following consultation with the Secured Creditors and the Debtor (the "**Closing Date**").

28. Following the Phase 2 Bid Deadline, the Monitor, in consultation with the Secured Creditors and the Debtor, will assess the Phase 2 bids received. The Monitor will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

29. The Monitor, in consultation with the Secured Creditors and the Debtor may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

30. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constitutes a Phase 2 Qualified Bid within three (3) business days of the Phase 2 Bid Deadline, or at such later time as the Debtor and the Sale Advisor deem appropriate.

31. The Monitor may, in consultation with the Secured Creditors and the Debtor, remove any of the Property and the Business of the Debtor from the SISP at any time.

32. The Monitor may, in consultation with the Secured Creditors and the Lender, terminate, at any time, further participation in the Phase 2 Bid Process by any interested party, or to modify dates or procedures as deemed appropriate or necessary, or to terminate the process.

33. The Monitor may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "Qualified Bid".

Evaluation of Competing Bids

34. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price and the net value and form of consideration to be paid provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, including, any conditions attached to the bid and the expected feasibility of conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Monitor, each as determined by the Monitor in consultation with the Debtor and the Secured Creditors.

Selection of Successful Bid

35. The Monitor: (a) will review and evaluate each Phase 2 Qualified Bid, in consultation with the Debtor and the Secured Creditors, and the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and (b) will identify the highest or otherwise best bid (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for the Property or the Business in whole or part. The determination of any Successful Bid by the Debtor shall be subject to approval by the Court.

36. The Monitor shall have no obligation to identify a Successful Bid, and reserves the right, after consultation with the Debtor and the Secured Creditors, to reject any or all Phase 2 Qualified Bids.

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

Sale Approval Motion Hearing

38. At the hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Application**") the Monitor shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

39. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Agreements, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and the Debtor and such other bidders or Potential Bidders in connection with the SISP. The Monitor may, however, with the consent of the applicable participants, disclose such information to other bidders for the purpose of seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.

40. It is not currently contemplated that any director, officer or senior management employee of the Debtor as of the date of the Initial Order (“**Management**”) will have any interest in any Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, including any economic, employment, contractual or other interest in such Phase 1 Qualified Bidder or Phase 2 Qualified Bidder. If any Management has or acquires any such interest in a Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, it shall promptly disclose such interest to the Monitor. Upon being informed of such interest, the Monitor shall take such actions as its deems appropriate to preserve the integrity of the SISP in light of such interest, which actions may include placing restrictions on the information disclosed to such person in connection with the SISP and competing bids and bidders.

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

(Amended and Restated Initial Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	08/June/2020
	)	

THE APPLICATION of the Petitioners coming on for hearing via telephone conference, on the 8th day of June, 2020 (the "**Order Date**"); AND ON HEARING David E. Gruber and Alexandra Andrisoi, counsel for the Petitioners and those other counsel and parties listed on Schedule "A" hereto all attended via telephone; AND UPON READING the material filed, including the First Report of Ernst & Young, Inc. ("**EY**"), the court appointed Monitor; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. This Amended and Restated Initial Order amends and restates the Order (the "**Initial Order**") of this Court made in these proceedings on May 29, 2020 (the "**Order Date**").

SERVICE

2. The time for service of the Notice of Application dated June 5, 2020 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

JURISDICTION

3. Port Capital Development (EV) Inc. ("**Port Capital GP**") is a company to which the CCAA applies. Pursuant to s. 11 of the CCAA, Evergreen House Development Limited Partnership (together with Port Capital GP, the "**Petitioners**") shall enjoy the benefits of the protections and authorizations provided in this Order, and shall be subject to the same restrictions hereunder.

PLAN OF ARRANGEMENT

4. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further Order of this Court, including for clarity the Enhanced Monitor's Powers provided herein, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with

the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

(a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and

(b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:

(i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;

(ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and

(iii) any related corporate matters.

7. Except as otherwise provided herein, and subject to the terms of the Commitment Letter and the Definitive Documents (as hereinafter defined) including for clarity the Enhanced

Monitor's Powers provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding $5,000.00 shall be approved by the Monitor;

(b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

(c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except as authorized by this Order;

(b) to make no payments in respect of any financing leases which create security interests;

(c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;

(d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and

(e) to not incur liabilities except in the ordinary course of Business.

11. Notwithstanding paragraph **10**, the Petitioners are permitted, with the consent of the Monitor, to make regular payments under all mortgages granted by the Petitioners due and after the Order Date.

RESTRUCTURING

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

(a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding $10,000.00 in any one transaction or $100,000.00 in the aggregate. If the disposition of assets exceeds these quantums, the Petitioners shall seek the approval of the Monitor, and if the Monitor deems appropriate, the approval of the Court for such dispositions;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate;

(c) pursue all avenues of refinancing for their Business or Property, in whole or part; and

(d) with the approval of the Court, and subject to this Order and any further Order, including for clarity the Enhanced Monitor's Powers provided herein, and on notice to (i) CMLS Financial Ltd. ("**CMLS**"), (ii) Aviva Insurance Company of Canada

("**Aviva**") and (iii) the pre-sale purchasers, deliver a notice of disclaimer or notice of termination of any pre-sale purchase and sale agreements for real property owned by the Petitioners (the "**Pre-Sale Contracts**") pursuant to Section 32 of the CCAA,

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If a Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers

advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including September 3, 2020 or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners, or Port Capital Development Inc. or Macario (Tobi) Reyes solely in their capacities as a guarantor, covenantor, indemnifier or similar capacity of any of the Petitioners' debts or liabilities, or the Monitor, or affecting the Business or the Property,

shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

18. Nothing in this Order, including paragraphs **16** and **17**, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner,

if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

APPOINTMENT OF MONITOR

23. EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) assist the Petitioners in sourcing debtor-in-possession financing, and advising the Petitioners in relation thereto;

(b) assist the Petitioners, to the extent required by the Petitioners, in dissemination, to the Interim Lender (as hereinafter defined) and its counsel on a bi-weekly basis of financial and other information as agreed to between the Petitioners and Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;

(c) monitor the Petitioners' receipts and disbursements;

(d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(e) advise the Petitioners in their preparation of the Petitioners' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than every four weeks following delivery of the initial cash flow projections or as otherwise agreed to by the Interim Lender;

(f) advise the Petitioners in their development of the Plan and any amendments to the Plan;

(g) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or

control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

26. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. The Monitor shall provide any creditor of the Petitioners and the Interim Lender with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners are confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

28. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ENHANCED MONITOR POWERS

29. The expansion of the Monitor's powers set forth below is hereby authorized and approved on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers and duties of the Monitor provided for above and in the CCAA.

30. In addition to the powers and duties of the Monitor set forth above, and without altering in any way the limitations and obligations of the Petitioners arising under this Order and by virtue of the institution of these proceedings, the Monitor is hereby authorized and empowered to:

(a) monitor the activities of any senior officer of the Petitioners in place at the time of this Order or who may be appointed by any subsequent orders of this Court;

(b) receive, collect and take possession of all monies and accounts now owed or hereinafter owing to any of the Petitioners, including without limitation refunds, management fees, dividends, distributions, rents, proceeds payable pursuant to a sale of any of the Petitioners' assets, and any other amounts payable to the Petitioners;

(c) take control of any and all accounts of the Petitioners, including accounts with financial institutions, and take all required acts with any financial institution to facilitate the Monitor's control of such accounts, including changing the signing authority on such accounts to such persons as the Monitor, in its sole discretion, deems appropriate, or, if deemed necessary by the Monitor, open one or more new accounts with any financial institution in the Monitor's own name (collectively the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds from the Petitioners as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties as set out herein, provided that the monies standing to the credit of the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, or any other order to be made by the Court in these proceedings;

(d) oversee and consent to any disbursement or payment required in respect of the Property or the Business, including capital expenditure or other expenditure relating to the preservation or protection of any of the Property and any disbursement or payment made under any order in these proceedings, or, if deemed necessary or appropriate by the Monitor in its sole discretion, make use of funds in the Monitor's Accounts from time to time to make any disbursements or payments for and on behalf of the Petitioners or in connection with the Monitor's exercise of its powers and duties set out herein;

(e) oversee and assist in the preparation of cash flow statements of the Petitioners and assist in the dissemination of financial and other information in these proceedings to those interested parties that, in the Monitor's discretion in consultation with the Petitioners, and in consideration of confidentiality concerns, ought to receive such information, including the delivery of monthly current rent rolls to mortgagees with interests in rental property;

(f) review and investigate the books and records of the Petitioners as necessary to enable the Monitor to exercise and discharge its powers and duties set out herein;

(g) be entitled to rely on the books and records of the Petitioners without independent investigation, unless otherwise ordered by the Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(h) conduct a review of the Petitioners' intercorporate accounts with all affiliates of the Petitioners and any entities managed by the Petitioners that are not Petitioners herein and:

(i) take any steps necessary in the Monitor's discretion to prevent any of the Petitioners' monies being transferred to affiliates of the Petitioners, any entities managed by the Petitioners, or any other party in the opinion of the Monitor as appropriate; and

(ii) file a report with the Court regarding same, including any recommendations by the Monitor as to how such intercorporate accounts, or the Petitioners' interests therein, should be dealt with;

(i) on behalf of the Petitioners or on its own behalf, engage such employees or former employees of the Petitioners and such consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, that the Monitor deems, at is sole discretion, to be necessary or appropriate to assist the Monitor with the exercise of the powers and duties conferred by this Order, including, without limitation, a chief restructuring officer and a project manager;

(j) if deemed necessary or appropriate by the Monitor in its sole discretion, subject to such requirements as are imposed by the CCAA, to cause the Petitioners to:

(i) permanently or temporarily cease, downsize or shut down all or any part of the Petitioners' Business or operations;

(ii) terminate the employment of such of the Petitioners' employees or temporarily lay off such of the Petitioners' employees as the Monitor deems appropriate; and

(iii) deliver, pursuant to Section 32 of the CCAA, a notice of disclaimer or notice of termination of any lease or agreement other than Pre-Sale Contracts;

(k) subject to paragraph **31**, with respect to the Pre-Sale Contracts pursuant to paragraph 11(d) of this Order, to determine whether such Pre-Sale Contracts are deemed by the Monitor in its discretion, but in consultation with the Petitioners, CMLS and Aviva, to be in default (the "**Defaulted Pre-Sale Contracts**"), and in the event the Monitor so determines, to seek directions of the Court as to whether such Pre-Sale Contracts ought to be disclaimed, and in the event such Pre-Sale Contracts are disclaimed:

(i) collect the forfeited deposit monies in connection with the Defaulted Pre-Sale Contracts (the "**Forfeited Deposits**"); and

(ii) hold the Forfeited Deposits in trust, subject to the specific security of CMLS and Aviva (subject to the existing priorities as between those parties), pending the results of the SISP or alternatively the Restructuring, and failing CMLS being fully paid via a sale under the SISP or other Restructuring on or before August 31, 2020, these Forfeited Deposits shall be paid to CMLS or Aviva, as the case may be, and applied against the Petitioners' debt owing to CMLS or Aviva, as the case may be;

(l) implement the sales and investment solicitation plan (the "**SISP**") attached hereto as **Schedule** "**B**";

(m) with the consent of CMLS, seek approval of the Court for a sale of all or any part of the Property following the conclusion of the timelines set out in the SISP; and

(n) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred upon the Monitor by this Order or any further order of the Court.

31. Notwithstanding the Monitor's discretion to determine whether Pre-Sale Contracts are in default, CMLS and/or Aviva are at liberty to:

(a) oppose the Monitor's application for directions as to whether such Pre-Sale Contracts ought to be disclaimed; and

(b) to bring an application seeking a declaration of this Court that any Pre-Sale Contract is in default, and in the event the Court declares any Pre-Sale Contract is in default, then the provisions of paragraphs 30(k)(i) and 30(k)(ii) of this Order shall apply.

32. No provision of this Order is intended, or shall be deemed to appoint the Monitor as an officer, director or employer of any of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners. Any distribution made to creditors of the Petitioners or any other Person in accordance with the terms of this Order and any other orders of this Court in these proceedings will be deemed to have been made by the applicable Petitioner and not the Monitor.

33. The Petitioners and their current and former shareholders, officers, directors, employees, agents and representatives shall cooperate fully with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other order of this Court.

ADMINISTRATION CHARGE

34. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amount[s] of $50,000.00 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. Counsel to the Petitioners, the Monitor and its legal counsel shall be careful to differentiate their accounts in this CCAA from time spent in other insolvency matters for related entities to the Petitioners and shall pass their accounts from time to time, and for this purpose the accounts of the Petitioners, the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

36. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $250,000.00, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs **43** and **46** hereof.

INTERIM FINANCING

37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed $1,250,000 unless permitted by further Order of this Court.

38. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020 (the "**Commitment Letter**"), filed.

39. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the

terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender’s Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender’s Charge shall have the priority set out in paragraphs **43** and **46** hereof.

41. Notwithstanding any other provision of this Order:

(a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender’s Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender’s Charge, the Interim Lender, upon five business days notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Commitment Letter, Definitive Documents and the Interim Lender’s Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioners against the obligations of the Petitioners to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

(c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

42. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

43. The priorities of the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

(a) First – Administration Charge (to the maximum amount of $250,000.00);

(b) Second – Interim Lender's Charge.

44. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge and the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

45. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

46. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in

priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge.

47. The Administration Charge, the Interim Lender's Charge, the Commitment Letter and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

48. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

SERVICE AND NOTICE

49. The Monitor shall (i) without delay, publish in the *Vancouver Sun* newspaper a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make the Initial Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

50. The Petitioners and the Monitor are at liberty to serve the Initial Order, this Amended and Restated Initial Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.ey.com/ca/terracehouse

52. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as

recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.ey.com/ca/terracehouse

53. Notwithstanding paragraphs **50** and **52** of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and the Initial Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

54. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

55. Nothing in the Initial Order or this Amended and Restated Initial Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

56. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

57. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside

Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

58. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

59. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

60. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

61. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

62. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

63. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the June 8, 2020.

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 E. Gruber
Lawyer for the Petitioners

BY THE COURT

Digitally signed by
Fitzpatrick, J

Digitally signed by
Roberts, Nicole

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	Party represented
Colin D. Brousson	CMLS Financial Ltd., and Desjardins Financial Security Life Assurance Company
Bryan Gibbons	Aviva Insurance Company of Canada
Peter Rubin	The Monitor

Schedule "B"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

Pursuant to a Companies' Creditor Arrangement Act, R.S.C. 1985, c. C – 36 ("**CCAA**") initial order (as may be amended from time to time, the "**Initial Order**") of the Supreme Court of British Columbia (the "**Court**") dated May 29, 2020 in Action No. VLC-S-S-205095, Vancouver Registry (the "**CCAA Proceeding**") in regard to Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (collectively the "**Debtor**"), Ernst & Young, Inc. was appointed as monitor (in such capacity, the "**Monitor**") in the CCAA Proceeding and was granted certain Enhanced Monitor's Powers (as defined in the Initial Order) including the power to implement the Sale and Investment Solicitation Plan set out herein (the "**SISP**") with regard to the assets of the Debtor being chiefly the development property having a legal description of PID: 006-721-397 Lot 18, Except that part of the Canadian Pacific Railway Right-of-Way as described in Absolute Fee Parcel Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92 and the Debtor.

Accordingly, the Monitor intends to conduct this SISP in consultation with CMLS Financial Ltd. and Aviva Insurance Company of Canada (collectively, the "**Secured Creditors**") and the Debtor. The SISP is intended to solicit interest in a sale of, or investment in, the assets and/or the businesses of the Debtor.

Pursuant to the SISP, all qualified interested parties will be provided with an opportunity to participate in the SISP.

OPPORTUNITY AND SISP SUMMARY

1. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Debtor's business and the Property (the "**Opportunity**").

2. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:

   (a) the sale of the Property (as defined in the Initial Order). Interested parties may submit proposals to acquire all, substantially all or a portion of the Property of the Debtor (a "**Sale Proposal**"); and

   (b) the investment in the business operations (the "**Business**") of the Debtor on a going concern basis. Such proposals may take the form of an investment in or proposals to restructure, reorganize or refinance the Business (an "**Investment Proposal**").

3. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Sale Proposal or any Investment Proposal will be on an "*as is, where is*" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor or any of its affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

4. As described more fully in this SISP, the major stages in the SISP will be comprised of the following:

(a) Pre-Marketing: preparation of all marketing material, assembly of all relevant due diligence material, establishment of an electronic data room and preparation of potential buyer/investor lists;

(b) Marketing: advertising, contacting potential buyers/investors, responding to requests for information and disseminating marketing material to potential buyers and investors; and

(c) Offer Submission and Evaluation: solicitation, receipt of, evaluation and negotiation of offers from potential buyers and investors, as described below.

5. The offer submission and evaluation stage of the SISP will be comprised of a two Phase offering process: "**Phase 1**" being the submission of non-binding asset purchase agreements or investment agreements ("**Agreements**") from qualified bidders, and "**Phase 2**" being the submission of a binding offer from those parties that submitted non-binding Agreements and have been invited by the Debtor to participate in Phase 2 (defined below as Phase 1 Qualified Bidders).

TIMELINE

6. The following table sets out the target dates under the SISP:

Target Dates	**Target Dates**
Phase 1 Non-Binding Bid Deadline	July 10, 2020
Phase 2 Binding Bid Deadline (or Auction Date)	August 7, 2020
Court Approval Date (subject to Court availability)	August 25, 2020
Outside Closing Date	August 31, 2020

7. The target dates set forth above may be adjusted in the sole discretion of the Monitor after consultation with the Secured Creditors and the Debtor.

PRE-MARKETING STAGE

8. As soon as reasonably practicable:

(a) The Monitor will solicit and consider marketing proposals from commercial real estate agents (an “**Agent**”) for the marketing of the Property and negotiate, accept or reject any of such proposals in consultation with the Secured Creditors and the Debtor. For clarity, in consultation with the Secured Creditors and the Debtor the Monitor may reject all such proposals and choose to market the Property directly;

(b) the Monitor or its Agent (if any) will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and its counsel (an "**NDA**"); and (iii) a confidential Information Memorandum ("**CIM**"). The CIM will specifically stipulate that the Monitor makes no representation or warranty as to the accuracy or completeness of the information contained in the CIM, the Data Room (as defined below), or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Monitor;

(c) the Monitor, with the assistance of the Debtor, will gather and review all required due diligence material to be provided to interested parties and shall establish a secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Monitor during the SISP;

(d) the Monitor, in consultation with the Secured Creditors and the Debtor, will develop a draft form of asset purchase agreement and draft form of investment agreement (collectively, the "**Agreement Form**"); and

(e) the Monitor or its Agent (if any), will prepare a list of potential bidders, including: (i) parties that have approached the Debtor, the Monitor or the Agent (if any) indicating an interest in the Opportunity; and (ii) local, national and international strategic and financial parties who the Monitor or the Agent (if any) believe may be interested in purchasing all or part of the Business and Property or investing in the Debtor pursuant to the SISP (collectively, "**Known Potential Bidders**").

MARKETING STAGE

9. The Monitor or its Agent (if any) will arrange for a notice of the SISP (and such other relevant information as the Monitor considers appropriate) (the "**Notice**") to be published in the real estate section of the Globe and Mail (National Edition), and any other newspaper or journals as the Monitor considers appropriate, if any.

10. The Monitor or its Agent (if any) will send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice or otherwise requests such documents as soon as reasonably practicable after such request or identification, as applicable.

11. The Monitor or its Agent (if any) will send the CIM and grant access to the Data Room to those parties who have executed and delivered the NDA to the Monitor or its Agent (if any).

12. Requests for information and access will be directed to a designated representative of the Monitor or the Agent (if any). Without limiting the terms of the NDA, all printed information shall remain the property of the Monitor or the Debtor as the case may be and, if requested by the Monitor, shall be returned without further copies being made and/or destroyed with an acknowledgement that all such material has either been returned and/or destroyed and no electronic information has been retained.

13. Any party who expresses a wish to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM and access to the Data Room, provide to the Monitor and the Debtor an NDA executed by it, and which shall inure to the benefit of any ultimate Successful Bidder, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.

14. If it is determined by the Monitor in consultation with the Secured Creditors and the Debtor and in the Monitor’s reasonable business judgment that a Potential Bidder: (i) has delivered the documents contemplated in paragraph 13 above then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**".

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1: Non-Binding Agreement

Submission Phase

15. At any time prior to the Phase 1 Bid Deadline, the Monitor, in consultation with the Secured Creditors and the Debtor may in their reasonable business judgment, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.

16. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Monitor.

17. Phase 1 Qualified Bidders who advise the Monitor or its Agent (if any) that they wish to submit an offer will be provided with a copy of the Agreement Form.

18. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an Agreement to the Monitor or its Agent (if any) at the addresses which will be Debtor and the specified in the Teaser Letter, so as to be received by not later than 5:00 PM (Vancouver time) on or before **July 10, 2020**, or such later date as the Monitor may determine after consultation with the Secured Creditors and the Debtor (the "**Phase 1 Bid Deadline**"). If the Phase 1 Bid Deadline is extended by the Monitor, it shall provide notice of such extension and the revised Phase 1 Bid Deadline to each Phase 1 Qualified Bidder.

19. An Agreement submitted in accordance with above paragraph will be considered a qualified Agreement (a "**Qualified Agreement**") only if:

    (a) it is submitted on or before the relevant Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) in the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and any assumptions supporting the valuation;

        (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

        (iii) a specific indication of the financial capability, together with evidence of such capability, of the Phase l Qualified Bidder and the expected structure and financing of the transaction;

        (iv) a description of the conditions and approvals required for a final and binding offer;

        (v) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

        (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

    (c) in the case of an Investment Proposal, it identifies or contains the following:

        (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;

        (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or in the Debtor in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;

(v) a description of the conditions and approvals required for a final and binding offer;

(vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;

(vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(d) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Debtor and/or the Sale Advisor from time to time.

20. The Monitor may, in consultation with the Secured Creditors and the Debtor waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified Agreement. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

21. Following the Phase 1 Bid Deadline, the Monitor will, in consultation with the Secured Creditors and the Debtor, assess the Qualified Agreements. If it is determined by the Monitor that a Phase 1 Qualified Bidder that has submitted a Qualified Agreement (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a "**Phase 2 Qualified Bidder**", provided that the Monitor may, in its reasonable business judgment, in consultation with the Secured Creditors and the Debtor, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

22. As part of the assessment of Qualified Agreements and the determination of the process subsequent thereto, the Monitor, in consultation with the Secured Creditors and the Debtor, shall determine the process and timing to be followed in pursuing Qualified Agreements based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified Agreements received; (ii) the extent to which the Qualified Agreements involve Investment Proposals or Sales Proposals; (iii) the scope of the Property or Business to which any Qualified Agreements may relate; and (iv) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to the Property, all provided that in the event that, prior to the determination of the manner of proceeding to Phase 2 of the SISP, the Monitor or the Debtor has received a proposal to refinance the secured debt owing to CMLS Financial Ltd. satisfactory to CMLS Financial Ltd. then the Monitor may determine to discontinue the SISP upon completion of such refinancing.

23. Upon the determination by the Monitor of the manner in which to proceed to Phase 2 of the SISP, and provided that the SISP is not discontinued, the Monitor will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

24. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter, the Monitor may, in consultation with the Secured Creditors and the Debtor, at any time bring an application to seek approval of a stalking horse asset purchase agreement or investment proposal in respect of some or all of the Property or Business and related bid procedures in respect of such Property or to establish further or other procedures for the SISP.

Due Diligence

25. The Monitor shall in its reasonable business judgment and subject to competitive and other business considerations, afford each Phase 2 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as they deem appropriate. Due diligence access may further include management presentations, on-site inspections, and other matters which a Phase 2 Qualified Bidder may reasonably request and to which the Monitor and/or Debtor, in their reasonable business judgment, may agree. The Monitor and Debtor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 2 Qualified Bidders and the manner in which such requests must be communicated. Neither the Monitor nor the Debtor will be obligated to furnish any information relating to the Property or Business to any person. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.

Phase 2: Formal Offers and Selection of Successful Bidder

26. Paragraphs 27 to 39 below and the conduct of Phase 2 bidding are subject to paragraphs 21 to 24, above, and any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

Formal Binding Offers

27. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Debtor or its Property and Business shall submit to the Monitor or its Agent (if any) a binding offer at the addresses specified in the Bid Process Letter, so as to be received by not later than 5:00 PM (Vancouver Time) on **August 7, 2020**, or such later date as the Monitor may determine after consultation with the Secured Creditors and the Debtor (the "**Phase 2 Bid Deadline**"). If the Phase 2 Bid Deadline is extended by the Monitor, it shall provide notice of such extension and the revised Phase 2 Bid Deadline to each Phase 2 Qualified Bidder. The binding offer shall comply with all of the following requirements:

    (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified Agreements;

    (b) cash is the preferred form of consideration, but if the bid utilizes other consideration, a description of the material terms of the consideration shall be provided;

    (c) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Monitor;

(d) unless otherwise agreed, the bid shall be set forth in a duly authorized and executed transaction agreement in the Agreement Form and shall include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;

(e) the bid shall set forth the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and the name or names of the ultimately beneficial owner(s) of the Phase 2 Qualified Bidder including their respective percentage interests;

(f) to the extent that a bid is conditional upon new or amended agreements being entered into with other parties, the Qualified Phase 2 Bidder shall provide the proposed terms of such amended or new agreements and identify how such agreements may differ from existing agreements to which the Debtor may be a party. A Phase 2 Qualified Bidder's willingness to proceed without such conditions and, where such conditions are included in the bid, the likelihood of satisfying such conditions, shall be an important factor in evaluating the bid;

(g) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction that will allow the Monitor, in consultation with the Secured Creditors and the Debtor, to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;

(h) the bid should not be conditioned on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder;

(i) for a Sales Proposal or an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the purchase price or investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, which shall be paid to the Monitor in trust (the "**Deposit**"). The Deposit shall be submitted upon the Phase 2 Qualified Bidder being selected as the Successful Bidder. The Successful Bidder's Deposit shall be applied as against the Purchase Price;

(j) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and the Debtor prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 2 from the Phase 2 Qualified Bidder); (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Monitor or any of its employees, representatives, agents or advisors, whether express, implied, statutory or otherwise, regarding the Business, Property, or the Debtor or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor;

(k) all required corporate approvals of the Phase 2 Qualified Bidder have been obtained prior to the submission of the bid;

(l) the bid shall identify any material conditions in favour of the purchaser to be resolved prior to closing the transaction;

(m) the bid is received by the relevant Phase 2 Bid Deadline; and

(n) the bid contemplates a schedule for closing the transaction set out therein which is on or before August 31, 2020**,** which date may be extended by the Monitor in its discretion, following consultation with the Secured Creditors and the Debtor (the "**Closing Date**").

28. Following the Phase 2 Bid Deadline, the Monitor, in consultation with the Secured Creditors and the Debtor, will assess the Phase 2 bids received. The Monitor will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

29. The Monitor, in consultation with the Secured Creditors and the Debtor may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

30. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constitutes a Phase 2 Qualified Bid within three (3) business days of the Phase 2 Bid Deadline, or at such later time as the Debtor and the Sale Advisor deem appropriate.

31. The Monitor may, in consultation with the Secured Creditors and the Debtor, remove any of the Property and the Business of the Debtor from the SISP at any time.

32. The Monitor may, in consultation with the Secured Creditors and the Lender, terminate, at any time, further participation in the Phase 2 Bid Process by any interested party, or to modify dates or procedures as deemed appropriate or necessary, or to terminate the process.

33. The Monitor may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "Qualified Bid".

Evaluation of Competing Bids

34. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price and the net value and form of consideration to be paid provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, including, any conditions attached to the bid and the expected feasibility of conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Monitor, each as determined by the Monitor in consultation with the Debtor and the Secured Creditors.

Selection of Successful Bid

35. The Monitor: (a) will review and evaluate each Phase 2 Qualified Bid, in consultation with the Debtor and the Secured Creditors, and the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and (b) will identify the highest or otherwise best bid (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for the Property or the Business in whole or part. The determination of any Successful Bid by the Debtor shall be subject to approval by the Court.

36. The Monitor shall have no obligation to identify a Successful Bid, and reserves the right, after consultation with the Debtor and the Secured Creditors, to reject any or all Phase 2 Qualified Bids.

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

Sale Approval Motion Hearing

38. At the hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Application**") the Monitor shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

39. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Agreements, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and the Debtor and such other bidders or Potential Bidders in connection with the SISP. The Monitor may, however, with the consent of the applicable participants, disclose such information to other bidders for the purpose of seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.

40. It is not currently contemplated that any director, officer or senior management employee of the Debtor as of the date of the Initial Order (“**Management**”) will have any interest in any Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, including any economic, employment, contractual or other interest in such Phase 1 Qualified Bidder or Phase 2 Qualified Bidder. If any Management has or acquires any such interest in a Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, it shall promptly disclose such interest to the Monitor. Upon being informed of such interest, the Monitor shall take such actions as its deems appropriate to preserve the integrity of the SISP in light of such interest, which actions may include placing restrictions on the information disclosed to such person in connection with the SISP and competing bids and bidders.

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

(Stay Extension Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	31/August/2020
	)	

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by telephone, on the 31st day of August, 2020; AND ON HEARING Alexandra Andrisoi, counsel for the Petitioners and those other counsel and parties listed on Schedule "A" hereto; AND UPON READING the material filed, including the Second Report of Ernst & Young, Inc., in its capacity as court appointed monitor, dated August 27, 2020; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application filed August 27, 2020 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

2. The stay of proceedings provided for in the Initial Order pronounced in these proceedings on May 29, 2020, as amended and restated on June 8, 2020, is hereby continued and extended to and including December 4, 2020.

3. 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 Alexandra Andrisoi
Lawyer for the Petitioners

BY THE COURT

Digitally signed by
Ng, Jasmine

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	Party represented
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.

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
(Stay Extension and Break Fee Approval Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	1/December/2020

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 1st day of December 2020; AND ON HEARING Alexandra Andrisoi, + 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 Third Report of Ernst & Young, Inc., in its capacity as court appointed monitor, dated November 27, 2020 and the Confidential Supplement to the Third 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:

SERVICE

1. ~~The time for service of the Notice of Application filed November 27, 2020 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.~~

STAY EXTENSION

2. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Order of this Court pronounced August 31, 2020, is hereby continued and extended to and including February 26, 2021.

APPROVAL OF BID OFFER AGREEMENT and BREAK FEE

3. The Monitor's execution of the Bid Offer Agreement attached as Appendix I to the Confidential Supplement to the Third Report of the Monitor (the "**Bid Offer Agreement**") between the Petitioners and Bosa Properties (OC) Inc. ("**Bosa**"), on behalf of the Petitioners, is hereby approved.

4. The payment of the break fee of CAD $100,000 to Bosa, on the terms and conditions provided in the Bid Offer Agreement, is hereby approved.

GENERAL

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

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

____

Signature of Alexandra Andrisoi
Lawyer for the Petitioners

BY THE COURT

____

REGISTRAR

FORM CHECKED NR

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.

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
(Stay Extension and Interim Financing Increase Order)

BEFORE THE HONOURABLE	)	February 24, 2021
MADAM JUSTICE FITZPATRICK	)	

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 24th day of February 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 Fourth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, dated February 23, 2021; 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:

SERVICE

1. The time for service of the Notice of Application filed February 23, 2021 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

STAY EXTENSION

2. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Order of this Court pronounced August 31, 2020 and December 1, 2020, is hereby continued and extended to and including May 4, 2021.

INCREASE OF INTERIM LENDING

3. The Petitioners are hereby authorized and empowered to enter into an amended and restated credit facility on substantially the same terms and conditions set forth in commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, provided that the cumulative borrowings under the Interim Facility as amended shall not exceed the principal amount of $1,500,000 unless permitted by further order of this court.

4. The Interim Lender shall be entitled to the benefits of the Interim Lender's Charge as defined in the ARIO with respect to the additional borrowing under the amended and restated credit facility, which Interim Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the amended and restated credit facility or the Definitive Documents.

5. Paragraphs 37 of the ARIO shall be amended as follows:

   37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "Interim Lender") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed <u>$1,500,000</u> unless permitted by further Order of this Court.

GENERAL

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

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

BY THE COURT

REGISTRAR

ENDORSEMENT ATTACHED

S205095

Signature of David Gruber
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.
Vicki Tickle	Counsel to Urban One Builders CM Inc., Doka Canada Ltd., Glastech Glazing Contractors Ltd., Cairns Electric Ltd. and Two Pillars Construction Ltd., Ar-Con Holdings (Builder Lien Claimants)

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
(Stay Extension and Break Fee Approval Order)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	16/April/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 16th day of April 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 fifth report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed ("**Fifth Report**") and the Confidential Supplement to the Fifth Report; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

STAY EXTENSION

1. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Order of this

Court pronounced February 24, 2021, is hereby continued and extended to and including June 11th, 2021.

APPROVAL OF PURCHASE AND SALE AGREEMENT and BREAK FEE

2. The Monitor's execution of the Purchase and Sale Agreement attached as Appendix I to the Confidential Supplement to the Fifth Report of the Monitor (the "**PSA**") between the Petitioners and Landa Global Acquisitions Ltd. ("**Landa**"), on behalf of the Petitioners, is hereby approved. Such approval does not constitute final approval of the transaction or vesting of the property, which shall be considered by this Court on a subsequent application.

3. Notwithstanding the Approval of the PSA, the Monitor is at liberty to conduct such further marketing and negotiations in connection with, the property of the Petitioners as determined by the Monitor.

4. The deadline for any party to submit an alternative proposal to that contained in the PSA shall be May 7, 2021.

5. The payment of the break fee to Landa on the terms and conditions provided in the PSA, is hereby approved.

GENERAL

6. 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
Lawyer for the Petitioners

BY THE COURT

Chris Gilmore
REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	Party represented
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.
Peter Reardon	David McKenzie
Jordan Schultz	Macario Reyes

No. S-205095
Vancouver Registry

**IN THE SUPREME
COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

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

ORDER MADE AFTER APPLICATION

David Gruber
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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
(Stay Extension Order & Increase in Interim Financing)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	11/June/2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the ~~15th~~ 11th day of June 2021; AND ON HEARING David Gruber, counsel for the Petitioners and those other counsel and parties listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Sixth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed (**"Sixth Report"**) and the Confidential Supplement to the Sixth Report; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

STAY EXTENSION

1. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Orders of this

Court pronounced February 24, 2021 and April 16, 2021, is hereby continued and extended to and including September 30, 2021.

INCREASE OF INTERIM LENDING

2. The Petitioners are hereby authorized and empowered to enter into an amended and restated credit facility on substantially the same terms and conditions set forth in commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, provided that the cumulative borrowings under the Interim Facility as amended shall not exceed the principal amount of $1,800,000 unless permitted by further order of this court.

3. The Interim Lender shall be entitled to the benefits of the Interim Lender's Charge as defined in the ARIO with respect to the additional borrowing under the amended and restated credit facility, which Interim Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the amended and restated credit facility or the Definitive Documents.

4. Paragraphs 37 of the ARIO shall be amended as follows:

   37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Desjardins Financial Security Life Assurance Company (the "Interim Lender") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed <u>$1,800,000</u> unless permitted by further Order of this Court.

GENERAL

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

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

BY THE COURT

REGISTRAR

ENDORSEMENTS ATTACHED

CHECKED

S205095
Vancouver

Signature of David Gruber
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
Colin D. Brousson	CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor, Ernst & Young, Inc.
Jordan Schultz	1296371 B.C. Ltd.
Kibben Jackson	Solterra Acquisitions Corp.
Alan Frydenlund	Domain Mortgage Corp.

5

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

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RUSH

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:	*Port Capital Development (EV) Inc. (Re),* 2021 BCSC 1272

Date: 20210630
Docket: S205095
Registry: Vancouver

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

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioners:	D. Gruber K. Cameron
Counsel for the Monitor, Ernst & Young Inc.:	P. Rubin
Counsel for CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company:	C. Brousson
Counsel for 1296371 B.C. Ltd. and Marcario Reyes:	J. Schultz E. Watson
Counsel for Aviva Insurance Company of Canada:	W. Roberts
Counsel for Landa Global Acquisition Ltd.:	S.A. Turner

Counsel for Solterra Acquisitions Corp. and Centura Building Systems (2013) Ltd.:	K. Jackson G. Nesbitt
Counsel for Domain Mortgage Corp.:	A. Frydenlund, Q.C.
Place and Date of Hearing:	Vancouver, B.C. May 25, June 8 and 10, 2021
Place and Date of Decision with Written Reasons to Follow:	Vancouver, B.C. June 15, 2021
Place and Date of Written Reasons:	Vancouver, B.C. June 30, 2021

INTRODUCTION

[1] The Petitioners are owners of an uncompleted residential tower in downtown Vancouver, British Columbia, known as the “Terrace House Project”.

[2] The Petitioners entered into these *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“*CCAA*”) proceedings to allow them to undertake a process toward a resolution of their financial difficulties that would allow them to complete the Project. That overall objective is no longer feasible.

[3] However, numerous parties have now advanced offers or bids to acquire the Project. The Court’s task is to consider these offers or bids and, if appropriate, decide which one should be approved.

[4] On June 15, 2021, I granted an order approving the acquisition of the project by Solterra Acquisitions Corp. (“Solterra”) dated June 4, 2021, with reasons to follow. These are my reasons.

BACKGROUND FACTS

[5] The Petitioners are subsidiaries of the Port Capital Group, which is in the business of real estate development and management in British Columbia and Ontario. Port Capital Development (EV) Inc. is the General Partner (GP) of the Limited Partnership.

[6] The “Terrace House Project” is a 19-storey high-rise luxury residential and commercial strata development located at 1250 West Hastings Street, Vancouver, British Columbia (the “Project”). The intention was to provide for 20 residential units and 2 commercial retail units above a 3-level underground parkade. The Project is unique in that its primary structural material is timber.

[7] In September 2017, pre-sales of the units began. In late 2018, construction began. The construction lender is CMLS Financial Ltd. (“CMLS”), who holds a first mortgage against the Project. Aviva Insurance Company of Canada (“Aviva”) provided deposit protection insurance for the pre-sale depositors in order to allow

the Petitioners to use the deposit monies for the Project. Aviva holds a second mortgage against the Project to secure any claims under the insurance.

[8] As of mid-2020, the parkade and structure for the first level of the building were substantially complete; approximately 20% of the Project was finished. At that time, approximately $16 million of pre-sales were in place for 17 residential units and both commercial units.

[9] In May 2020, CMLS stopped funding and demanded payment of its secured debt.

[10] In late May 2020, the Petitioners filed these *CCAA* proceedings, supported by the evidence of Macario Reyes, a director and officer of the Port Capital Group and Port Capital Development (EV) Inc. At the time, the evidence was that the Petitioners owed approximately $34.8 million secured debt and $8 million unsecured and lien debt. One of the lienholders is Centura Building Systems (2013) Ltd. ("Centura"), who is owed $473,277. Centura is related to Solterra.

[11] At the start of these proceedings, Mr. Reyes was of the opinion that there was sufficient security in the value of the Project such that a restructuring might be achieved, perhaps either by an equity investment or liquidation of the assets. Mr. Reyes faces considerable personal exposure from the failure of the Project, as he is a covenantor of the CMLS debt and a guarantor of the Aviva debt.

[12] On May 29, 2020, I granted the Initial Order. In that Order, I granted an Administration Charge ($250,000). I also appointed Ernst & Young Inc. as monitor (the "Monitor") with enhanced powers to assume control of the Petitioners and the Project. Specifically, the Monitor was directed to implement a sales and investment solicitation plan ("SISP") with input from CMLS and Aviva. The SISP sought a "dual track" process to either produce bids or offers for a sale of the Project or an investment in the Petitioners on a going concern basis, such as in the form of a restructuring, reorganization or refinancing of the Project.

[13] On June 8, 2020, I granted the Amended and Restated Initial Order ("ARIO") extending the stay and other relief under the Initial Order and authorizing interim financing of $1.25 million (now $1.8 million) from Desjardins Financial Security Life Assurance Company, a company affiliated with CMLS (the "Interim Lending Facility").

[14] In June 2020, the SISP began with high hopes. Unfortunately, for many reasons, the results of the SISP were disappointing and there was considerable delay in advancing the process. The reasons included the complexity of the Project and the various stakeholder interests at play, some of which are in conflict and only potentially resolved though litigation.

[15] By late 2020, the SISP had produced a number of offers. The Monitor received proposed asset purchases from Solterra, Landa Global Acquisitions Inc. ("Landa") and Bosa Properties (OC) Inc. ("Bosa"). In addition, the SISP produced a bid from the Port Capital Group (fronted by Mr. Reyes) toward a refinance or restructuring in conjunction with the approval of a plan of arrangement to the unsecured creditors.

[16] In its Third Report dated November 27, 2020, the Monitor recommended acceptance of Bosa's offer as the best viable option, despite the fact that the offer was highly conditional.

[17] On December 1, 2020, I approved Bosa's offer, including a $100,000 Break Fee payable if another offer was court approved in its place. By February 2021, Bosa had satisfied certain pre-conditions and put forward a revised offer; however, that revised offer was not acceptable to CMLS and the offer collapsed.

[18] The Monitor returned to the drawing board.

[19] At some point, Landa became aware that Bosa's offer had collapsed. Given Landa' continued interest in the Project, on March 25, 2021, Landa and the Monitor executed a purchase and sale agreement ("Landa Offer #1").

[20] Landa Offer #1 was in the form of an asset purchase, although the parties allowed for the possibility of completion pursuant to a Reverse Vesting Order (“RVO”). That scenario was seen as beneficial in order to allow the existing Petitioners to continue under Landa’s ownership and control while preserving existing contractual rights, such as the building permit (but not the pre-sale contracts). The RVO structure also avoided payment of substantial property transfer tax.

[21] Under either an outright sale or an RVO, all parties were aware that the net sale proceeds under Landa Offer #1 were insufficient to repay the Interim Lending Facility and the CMLS indebtedness (approximately $21.1 million).

[22] On April 16, 2021, I approved Landa Offer #1 and a Break Fee. Various aspects of Landa Offer #1 were not made public at the time, despite Mr. Reyes’ initial opposition (later withdrawn) and Aviva’s opposition. I sealed Landa Offer #1 to remove the purchase price and amount of the Break Fee.

[23] In approving Landa Offer #1, I accepted the Monitor and Landa’s stated intentions (per Landa Offer #1) that the Monitor would have a short period of time (15 days) to re-activate the SISP and obtain any other superior offers that might be available from a party other than Landa.

[24] Landa Offer #1 specifically provided:

> **1.1** … “**Bona Fide Offer**” means a binding offer to purchase all or part of the Purchased Assets from a Prospective Purchaser, which offer contains no conditions that are not capable of being satisfied or waived by the parties within fifteen (15) Business Days or less of the date on which such offer is accepted by both parties …
>
> **8.7** **Satisfaction and Waiver of Vendor’s Conditions**. Notwithstanding anything to the contrary set out herein, from the date of issuance of the [April 16, 2021 Order] until the Final Offer Date, the Vendor … may engage in further marketing of and negotiations in connection with the Purchased Assets for the purpose of soliciting Bona Fide Offers from prospective purchasers that are not party to this Agreement (each, a “**Prospective Purchaser**”). In the event that the Vendor receives one or more Bona Fide Offers from Prospective Purchasers which provide for a superior offer to that of the Purchaser under this Agreement (a “**Superior Offer**”), the Vendor shall notify the Purchaser in writing.…

[25] Accordingly, if no other “Superior Offers” arose, the Monitor expected to return to Court to seek either a Vesting Order or RVO to implement Landa Offer #1. A tentative Court hearing date of May 25, 2021 was booked. If one or more “Superior Offers” arose, and accepted by the Monitor, Landa Offer #1 became null and void, the deposit was to be returned to Landa and the Break Fee paid. In its report, the Monitor stated that, in that latter event, it would determine a process to select the transaction (i.e. the “Superior Offer”) that would be brought before the Court for approval.

[26] In its Fifth Report, the Monitor described this later sales process as “akin to a final sealed bid process”. In its Sixth Report dated May 20, 2021, the Monitor confirmed the unique features of this last effort to obtain bids, describing it as a “hybrid between a Stalking Horse procedure and Sealed Bid procedure”. This was all indicative of the intention (at least initially) to maintain confidentiality of the purchase price in the Landa Offer #1 and any later bids.

THE “SUPERIOR OFFERS”

[27] The Monitor’s return to the market to solicit offers for the Project was successful.

[28] Before the new bid deadline of May 7, 2021, the Monitor received two offers, both for consideration higher than that of Landa Offer #1. These offers were outlined in the Monitor’s Sixth Report:

a) An unconditional cash offer from Solterra (“Solterra Offer #1”); and

b) A highly conditional offer from 1296371 B.C. Ltd. (“129”), a company controlled by Mr. Reyes which was incorporated to facilitate the proposed transaction. 129 proposed to repay the Interim Lending Facility and refinance and take an assignment of the CMLS debt (the “129 Offer”). This refinancing was to arise from new advances from Domain Mortgage Company (“Domain”), use of the approximate $8 million in cash deposits held and a loan from 1260780 B.C. Ltd. (“126”), a company owned by Mr. Reyes' mother, Luz Consuelo Reyes. Essentially, the 129 Offer was to allow the Petitioners to continue in the *CCAA* proceedings, but without the Monitor's enhanced powers and with control provisions in favour of Domain.

[29] In its Sixth Report, the Monitor outlined that it considered Solterra Offer #1 to be a "Superior Offer" to Landa Offer #1; CMLS also supported this offer. The Monitor did not consider the 129 Offer as a "Superior Offer" since it remained conditional (and would continue to be so until after the deadline for conditions being satisfied/waived — May 31 — under Landa Offer #1). CMLS did not support the 129 Offer.

[30] On May 14, 2021, the Monitor and Solterra signed a purchase and sale agreement. The Monitor then began the process of preparing the necessary application materials to have the Court approve the Solterra Offer #1 at the hearing scheduled for May 25, 2021.

[31] However, just days after the execution of Solterra Offer #1, the confidentiality aspects of the Monitor's unique sales process began to unravel.

[32] On May 17, 2021, the Monitor advised Landa as to the purchase price under Solterra Offer #1 ($21 million). This was an unfortunate disclosure from Solterra's point of view; however, it was done based on the Monitor's reasonable understanding that Landa did not intend to further participate in the sales process. Indeed, that intention is arguably evident from the Landa Offer #1 itself, particularly clause 8.7 above (about offers from *other parties*) and the fact the Court approved a Break Fee for Landa.

[33] In fact, Landa was still interested in increasing its offer for the Project and it immediately enquired as to whether it could submit yet another bid to the Monitor. The Monitor advised that it contractually obliged to put Solterra Offer #1 before the Court; however, any further offer from Landa would also be put before the Court, if received.

[34] On May 24, 2021, the Monitor provided a Confidential Supplement to the Sixth Report. The Monitor outlined that Landa had submitted a revised offer ($21.5 million) ("Landa Offer #2"). This was an increase from the price under Landa Offer #1 ($19 million). In addition, the Monitor indicated that the 129 Offer contemplated total consideration of approximately $22.5 million, assuming the various pre-conditions still outstanding could be satisfied.

[35] On May 25, 2021, the application to approve Solterra Offer #1 came before the Court. At that time, there was considerable controversy as to how to proceed. Solterra was not represented at the hearing by legal counsel although principals of Solterra who attended stated that it would be unfair to consider further unconditional cash offers, including Landa Offer #2. Landa wanted a further bidding process, stating that Landa Offer #2 would realize a better return of about $850,000 above Solterra Offer #1.

[36] In addition, at the May 25, 2021 hearing, 129 still expressed interest in acquiring the Project. On May 25, 2021, 129 filed its own application seeking Court approval of the 129 Offer together with Mr. Reyes' Affidavit #2 sworn May 21, 2021.

[37] At the conclusion of the May 25, 2021 hearing, I adjourned the matter until June 8, 2021. The Monitor, with the concurrence of CMLS and Aviva, supported such a result. In part, the adjournment was necessary because there had been minimal notice of the application to approve Solterra Offer #1. At the time, I indicated to the array of bidders that I 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.

PRE-HEARING BIDS / OFFERS

[38] The Monitor did receive new offers or bids.

[39] At the June 8, 2021 hearing, the Monitor provided its Confidential Seventh Report. The Monitor indicated that, on June 4, 2021, it received two additional cash offers:

a) Landa submitted a third revised offer ($22 million) ("Landa Offer #3"); and

b) Solterra submitted a second "backup" revised offer on a "without prejudice" basis (the "Solterra Backup Offer"). This rider was in relation to Solterra's argument that the Court should have approved Solterra Offer #1 on May 25, 2021. The Solterra Backup Offer was sealed and not publicly made available, save to CMLS and Aviva. However, the Monitor advised all stakeholders that the Solterra Backup Offer was superior in value to Landa Offer #3.

[40] In addition, on June 4, 2021, the Monitor received a revised offer from 129 (the "129 Revised Offer"). In support, Mr. Reyes provided his Affidavits #3 and #4 sworn June 4 and 7, 2021, essentially referring to revisions to the 129 Offer and the removal of further conditions, as I will describe in greater detail below. In the Seventh Report, the Monitor reported that the 129 Revised Offer would result in a "materially better" outcome for the stakeholders than both Solterra Offers and Landa Offer #3.

[41] At the hearing, Landa conceded that Landa Offer #3 should not be approved in the face of the 129 Revised Offer. Landa proposed that Landa Offer #3 should stand as a backup offer in the event that the 129 Revised Offer was court approved, but failed to close for any reason.

[42] In broad strokes, as of June 8, 2021, the financial consequences to the two major secured creditors of the various offers before the Court were as follows:

a) Under the Solterra and Landa cash offers, the Interim Lending Facility and priority professional fees would be paid. In addition, CMLS would suffer a shortfall to varying degrees: Solterra Offer #1 — $3.2 million shortfall; Landa Offer #3 — $1.7 million shortfall; and Solterra Backup Offer — a shortfall in excess of $500,000;

b) Under any of the cash offers, the Petitioners would disclaim the $16 million of pre-sale agreements. Aviva would immediately crystalize its exposure (estimated at $8.6 million). Both CMLS and Aviva hold security against the $8 million cash deposits. CMLS/Aviva would then potentially advance arguments that these pre-sale purchasers had forfeited the right to a return of those cash deposits such that CMLS/Aviva could claim those amounts toward satisfaction of their loans; and

c) Under the 129 Revised Offer, the material benefits, as noted by the Monitor were: 1) the Interim Lending Facility and CMLS would be paid in full; 2) Aviva's security position would be "improved" with the prospect of full or material recovery; and 3) the parties would avoid litigation with respect to the $8 million in pre-sale cash deposits by converting them into a secured position against the Project.

ISSUES

[43] The parties agree that the issues to be decided are:

a) Should the Court approve the 129 Revised Offer?

b) If the 129 Revised Offer is not approved, which Offer should be considered and/or approved as between Solterra and Landa?

THE 129 REVISED OFFER

Description of the 129 Revised Offer

[44] It is important at the outset to emphasize that the Petitioners do not put 129's offers forward; rather, Mr. Reyes presents them through 129, a new company specifically formed by him for this proposed transaction.

[45] The salient details of the 129 Revised Offer are as follows:

a) $24.96 million would be raised, as follows:

   i. $14.7 million from Domain;

   ii. $8 million in pre-sale deposits (including a $2.8 million deposit held for Ms. Reyes) to be released and advanced to 129;

   iii. $2.15 million to be loaned from 126 (Ms. Reyes) to 129;

   iv. 129, as the Junior Lender, then loans these amounts to “Newco”, a company to be incorporated by Domain to hold the CMLS security;

   v. Pre-payments to Domain ($105,000),

b) $24.96 million would be used, as follows:

   i. Payment in full of the Interim Lending Facility ($1.3 million) and *CCAA* secured professional fees ($507,000);

   ii. Purchase and assignment of the CMLS loan and security ($21.3 million) to Newco, thus saving Mr. Reyes from his covenant;

   iii. Fees and various holdbacks ($1.5 million), including a six-month interest reserve for Domain ($851,250); and

   iv. Payment of Break Fee/Expense Reimbursement to Landa and Solterra (total $250,000).

[46] It is quite apparent that the 129 Offer has evolved substantially since May 7, 2021 until its current iteration on June 4, 2021 under the 129 Revised Offer (including by an increased consideration amount). The Monitor confirms that most of the conditions relating to the 129 Revised Offer have now been satisfied, save for customary funding conditions. That was not the case as of May 25, 2021 and, indeed, some conditions were only satisfied on the eve of this hearing.

[47] There are some unique features under the 129 Revised Offer relevant to the existing stakeholder interests:

a) The $16 million in pre-sale contracts are to remain intact (unlike the Landa and Solterra Offers);

b) Subordinate security interests after Domain in first ranking position are: second, 129 as the Junior Lender to hold security in respect of the pre-sale deposits in a sharing arrangement with Aviva; third, Aviva for any balance owed; fourth, 126 for the $2.15 million loan; and fifth, 129 for the balance owed to it. Effectively, this allows Aviva to maintain some hope of recovery under its secured loan as opposed to an immediate exposure of $8.6 million (subject to any recovery against the $8 million cash deposits held) under the Landa/Solterra Offers. Mr. Reyes benefits from this potential reduction or elimination of his personal exposure to Aviva; Ms. Reyes avoids litigation with Aviva over her pre-sale deposit;

c) The proposed structure will not leave the Petitioners with any excess cash. Accordingly, 129 proposes to have 126 advance a further unsecured convertible loan to the Petitioners of up to $750,000 as "working capital", to be converted into some new equity structure of the Petitioners. The Monitor has prepared a cash flow forecast for the next six months to December 2021 indicating funding requirements of approximately $600,000; and

d) Mr. Reyes says that this later conversion of 126's working capital loan will "likely" require the creation of new limited partner units that would have preferential rights over the existing limited partners.

[48] The crux of the issues relating to the 129 Revised Offer lies in the *CCAA* relief that Mr. Reyes and 129 say they must obtain from the Court. They seek the following Court approval and orders, said to be necessary to implement the 129 Revised Offer:

a) an extension of the stay of proceedings to December 11, 2021;

b) Authorization to release the pre-sale deposits to 129 to allow 129 to pay $8 million to CMLS for the purchase and assignment of the CMLS security, to stand as an advance by 129 to the Petitioners secured by the

CMLS security. All of these pre-sale purchasers consent to the release of the deposits;

c) Authorization to borrow up to $750,000 from 126 for the "working capital" loan and approval of the terms of the commitment letter. Contrary to Mr. Reyes' statement that this would "likely" require a restructuring of the partnership interests, the Court is being asked to bless the commitment letter to seemingly grant 126 the "right, in its sole discretion" to convert the debt into limited partnership units that *will be* preferential to all classes of existing units in the limited partnership;

d) The "Refinancing Transaction" involves granting Court approval to the Petitioners to borrow money from Domain to fund the Interim Lending Facility and repay CMLS in full and take an assignment of the CMLS security, up to $25 million. This "Refinancing" or "New Loan Facility" is to be documented in the usual fashion, with the significant proviso that the Petitioners are authorized to agree to amendments so as to provide that the CMLS security would secure *all obligations* of the Petitioners to both Domain, 126 and 129 (i.e. about $25 million) and stand as a first secured charge on the Project.

[49] In addition, the proposed order sought by Mr. Reyes and 129 would provide significant controls in this *CCAA* proceeding to Domain. Domain may act on its secured loan upon default and without Court approval or oversight; Domain is to be unaffected by any plan of arrangement or proposal; no order can be granted approving interim financing in priority to the New Loan Facility (essentially, the CMLS security, as amended); the Monitor's enhanced powers are removed; and:

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

[50] 129 says that the transaction is designed to create an opportunity to secure new construction financing that will allow the Petitioners to repay the New Loan Facility, exit *CCAA* proceedings and ultimately proceed with the Project as intended.

Section 11 of the *CCAA*

[51] 129 brings its application and rests its arguments on s. 11 of the *CCAA* as the jurisdictional basis upon which it asks the Court to grant the relief sought. Section 11 allows the Court a broad discretion to grant relief that is "appropriate in the circumstances." The jurisprudence that assists the Court in addressing the exercise of its discretion under s. 11 is not in dispute.

[52] The court must exercise its discretion with a view to the statutory objectives and remedial purposes of the *CCAA*: *Century Services Ltd. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70:

> …However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. 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. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts 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.

[53] The parameters of the Court's discretion were recently discussed in *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 [*Callidus*]. At that time, the Court confirmed the fundamental principle that a *CCAA* court must always exercise that discretion toward the statutory policy objectives and that the ability of a court to be innovative and creative in that respect is not "boundless":

> [49] The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three "baseline considerations" (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the

circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

[50] The first two considerations of appropriateness and good faith are widely understood in the *CCAA* context. Appropriateness "is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*" (para. 70). Further, the well-established requirement that parties must act in good faith in insolvency proceedings has recently been made express in s. 18.6 of the *CCAA*, which provides:

…

[65] There is no dispute that the *CCAA* is silent on when a creditor who is otherwise entitled to vote on a plan can be barred from voting. However, *CCAA* supervising judges are often called upon "to sanction measures for which there is no explicit authority in the *CCAA*" (*Century Services*, at para. 61; see also para. 62). In *Century Services*, this Court endorsed a "hierarchical" approach to determining whether jurisdiction exists to sanction a proposed measure: "courts [must] rely first on an interpretation of the provisions of the *CCAA* text before turning to inherent or equitable jurisdiction to anchor measures taken in a *CCAA* proceeding" (para. 65). In most circumstances, a purposive and liberal interpretation of the provisions of the *CCAA* will be sufficient "to ground measures necessary to achieve its objectives" (para. 65).

…

[67] Courts have long recognized that s. 11 of the *CCAA* signals legislative endorsement of the "broad reading of *CCAA* authority developed by the jurisprudence" (*Century Services*, at para. 68). . . .

On the plain wording of the provision, the jurisdiction granted by s. 11 is constrained only by restrictions set out in the *CCAA* itself, and the requirement that the order made be "appropriate in the circumstances".

[68] Where a party seeks an order relating to a matter that falls within the supervising judge's purview, and for which there is no *CCAA* provision conferring more specific jurisdiction, s. 11 necessarily is the provision of first resort in anchoring jurisdiction. As Blair J.A. put it in *Stelco*, s. 11 "for the most part supplants the need to resort to inherent jurisdiction" in the *CCAA* context (para. 36).

…

[70] . . . The exercise of this discretion must further the remedial objectives of the *CCAA* and be guided by the baseline considerations of appropriateness, good faith, and due diligence. This means that, where a creditor is seeking to exercise its voting rights in a manner that frustrates, undermines, or runs counter to those objectives — that is, acting for an "improper purpose" — the supervising judge has the discretion to bar that creditor from voting.

…

[76] Whether this discretion ought to be exercised in a particular case is a circumstance-specific inquiry that must balance the various objectives of the

> *CCAA*. As this case demonstrates, the supervising judge is best-positioned to undertake this inquiry.
>
> [Underline emphasis added; italic emphasis in original.]

[54] No person appearing on this application disputes that I have the jurisdiction under s. 11 to grant the relief sought by 129. The issue raised by Centura, as a creditor, lienholder and stakeholder of the Petitioners, is whether I *should* exercise that discretion.

[55] Before turning to an analysis under s. 11 of the *CCAA* in relation to what the 129 Revised Offer is, I will first address what the 129 Revised Offer is not.

The 129 Revised Offer is not a redemption

[56] 129 describes the transaction in its application materials as a "redemption financing" and counsel submits that it is "effectively" a redemption of the CMLS mortgage. Centura refers to well-settled law that the right of redemption in these circumstances allows the subordinate mortgagee (Aviva), not the mortgagor (the Petitioners), to redeem the CMLS mortgage by paying it out and taking an assignment of the security: *Classic Mortgage Corporation v. 0768723 B.C. Ltd.*, 2017 BCSC 1100 at paras. 13-16.

[57] This transaction is not a redemption of the CMLS mortgage. The Petitioners are not paying CMLS. Aviva is not paying CMLS, although I acknowledge that Aviva consents to CMLS being paid out by 129/Domain and the assignment of the CMLS mortgage to Domain/Newco. While there are features of this transaction that one might see in a redemption scenario, this is well beyond a redemption by which the CMLS security is simply assigned to Domain. In fact, Domain is not content with the existing terms of the CMLS security; it requires that the terms of the CMLS security be amended.

The 129 Revised Offer is not brought as Interim financing

[58] The proposed transaction is described by Mr. Reyes as a "refinancing". 129 argues that the "refinancing" allows the Petitioners further "breathing room" to continue their restructuring efforts.

[59] Financing issues in the midst of *CCAA* proceedings are not new and are commonplace. The Court in *Callidus* described the rationale behind interim financing in *CCAA* proceedings:

> [85] Interim financing, despite being expressly provided for in s. 11.2 of the *CCAA*, is not defined in the Act. Professor Sarra has described it as "refer[ring] primarily to the working capital that the debtor corporation requires in order to keep operating during restructuring proceedings, as well as to the financing to pay the costs of the workout process" (*Rescue! The Companies' Creditors Arrangement Act*, at p. 197). Interim financing used in this way — sometimes referred to as "debtor-in-possession" financing — protects the going-concern value of the debtor company while it develops a workable solution to its insolvency issues [Case citation omitted]. That said, interim financing is not limited to providing debtor companies with immediate operating capital. Consistent with the remedial objectives of the *CCAA*, interim financing at its core enables the preservation and realization of the value of a debtor's assets.

[60] Centura, citing *Callidus,* argues that the proposed transaction is a restructuring that confiscates the rights of subsequent encumbrancers' (ie. lien holders) and is therefore a "plan of arrangement" which requires approval by the requisite majorities of creditors'. 129 says that the transaction does not seek to compromise any other claims against the Petitioners and argues that the alternative transactions result in a greater shortfall to CMLS and no recovery for any subsequent stakeholders.

[61] In *Callidus*, there was considerable discussion as to whether the imposition of a litigation financing charge to support a litigation funding agreement (LFA) was a plan of arrangement compromising creditors' rights (requiring a creditor vote) or whether it could be justified as a financing mechanism (para. 102). The Court held that, although the litigation financing charge had the effect of placing certain secured creditors behind the litigation funder, the LFA was not a plan of

arrangement because it did not propose any compromise of the creditors' rights. At para. 111, the Court stated:

> We agree with the supervising judge that the LFA is not a plan of arrangement because it does not propose any compromise of the creditors' rights. To borrow from the Court of Appeal in *Crystallex*, Bluberi's litigation claim is akin to a "pot of gold" (para. 4). Plans of arrangement determine how to distribute that pot. They do not generally determine what a debtor company should do to fill it. The fact that the creditors may walk away with more or less money at the end of the day does not change the nature or existence of their rights to access the pot once it is filled, nor can it be said to "compromise" those rights. When the "pot of gold" is secure — that is, in the event of any litigation or settlement — the net funds will be distributed to the creditors. Here, if the Retained Claims generate funds in excess of Bluberi's total liabilities, the creditors will be paid in full; if there is a shortfall, a plan of arrangement or compromise will determine how the funds are distributed. Bluberi has committed to proposing such a plan (see supervising judge's reasons, at para. 68, distinguishing *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327, 296 D.L.R. (4th) 577).

[62] Having found that the LFA was not a plan of arrangement, the Court held that the supervising judge had the authority to approve those charges without a creditors' vote pursuant to s. 11.2 (para. 114).

[63] 129 (in place of the Petitioners) seeks to authorize the Petitioners to not just refinance the existing debt with the existing priorities, but increase that secured debt against the Project. The net effect of the "refinancing" is to convert the debt under the Interim Lending Facility and the professional fees into the CMLS secured charge and also add millions of dollars of secured debt on the Project (to be accommodated within the increased limit of $25 million).

[64] The New Loan Facility also significantly alters the commercial terms of the CMLS debt and security, including by substantially increasing the interest rate on the secured loan. Without a court order, any modifications to the CMLS security have no effect on existing charges: *Land Title Act*, R.S.B.C. 1996, c. 25, ss. 1 (definitions of "charge" and "encumbrance") and 206(2).

[65] In my view, it is not necessary to make a finding in relation to Centura's arguments that the proposed transaction under the 129 Revised Offer

compromises the rights of the creditors including Centura and goes beyond a “refinancing”. Even if the 129 Revised Offer could be characterized as a “refinancing” in these *CCAA* proceedings, another issue arises.

[66] 129 does not seek court approval pursuant to s. 11.2 of the *CCAA*, being the express statutory provision that allows this Court to approve interim financing in *CCAA* proceedings and grant priority over existing secured creditors, such as 129 (on behalf of the Petitioners) proposes here. Further, the Petitioners are not the entities arranging this refinancing and seeking court approval of it. This is an outside party (129) that seeks to refinance the debt. Section 11.2(1) specifically provides that the debtor company may apply for interim financing.

[67] 129 refers to my decision in *League Assets Corp. (Re)*, 2014 BCSC 2589 as authority to approve this complex transaction. That decision involved a complex tax-driven restructuring transaction that had both sale and refinancing aspects. In my view, 129’s reliance on this decision is misplaced, as this transaction is quite different. In any event, I would note that I considered the “financing” piece of the *League Assets* transaction and approved it within the context of s. 11.2 of the *CCAA*.

[68] In *Callidus,* as previously noted, the Court upheld the supervising judge’s approval of the litigation financing charge pursuant to s. 11.2 (para. 114).

[69] Accordingly, in the event that 129 is correct that this transaction does not compromise Centura’s rights and is akin to an interim financing, the requirements of s. 11.2 of the *CCAA* must be considered.

[70] 129, either directly or through the Petitioners, does not make any effort to specifically address and provide a proper evidentiary foundation for the Court’s consideration of the various factors under s. 11.2(4) of the *CCAA*. Under s. 11.2(4)(d), the court is to consider “whether the loan would enhance the prospects of a viable compromise or arrangement being made” by the Petitioners. As I will discuss below, no evidence exists that would support a consideration of

this factor. Further, under s. 11.2(4)(g), the court is to consider the Monitor's views. The Monitor outlines the terms of the 129 Revised Offer and its benefits, but does not provide any specific recommendations on the "financing aspects" of it.

[71] In addition, any application under s. 11.2 must be on notice to "secured creditors" who are likely to be affected. I am not aware that proper notice has been given to all of the secured creditors who might be affected by the proposed transaction. Without notice and the opportunity to make submissions, it is difficult to properly assess whether any creditor would be materially prejudiced in consideration of s. 11.2(4)(f). Centura alleges "material" prejudice, noting that despite being presently "out of the money" under its lien, the lien claimants may have a preference that a new developer acquire the Project. Centura argues that, in some instances, suppliers can have leverage aside from their lien claims, including because they are required to sign off on completion for engineering reports and permits, or because their work is sufficiently advanced that hiring a replacement is economically impractical.

[72] I would digress at this point to note that similar difficulties arise with respect to the proposed court approval of the working capital loan to endorse the granting of rights to 126 in relation to the rights of the existing limited partners. I see no basis upon which I might make such an order, under s. 11 or otherwise. I am not aware that notice has been given to these limited partners and they have not agreed to such a provision, such as in a plan of arrangement or compromise that they might have considered and voted upon: *Calpine Canada Energy Limited (Re)*, 2007 ABQB 504 at para. 41.

[73] Again, as already stated, 129 does not seek relief under s. 11.2 of the *CCAA*. 129's counsel only suggests that its "refinancing" is appropriate in disregarding the interests of the other creditors, including the lienholders, since they are currently "out of the money". I agree with 129's counsel's assessment of the likely current monetary value of the other creditor's interests. However, in my

view, that is a very unprincipled basis upon which to argue that this “refinancing” is an “appropriate” outcome in the balancing exercise with regard to all stakeholders.

The 129 Revised Offer is not a sale

[74] The transaction under the 129 Revised Offer is also not described as a sale, akin to what to what Landa and Solterra propose.

[75] As a commercial transaction toward assuming control and effective ownership of the Project, there is nothing objectionable about the business aims under the 129 Revised Offer. Mr. Reyes could have used 129 as a corporate vehicle to purchase the Project — just as Landa and Solterra wish to do — via an outright sale or a RVO structure. In doing so, 129 could have arranged for the Domain financing, by either refinancing the CMLS security or simply paying it out and placing new security on title. In that event, Mr. Reyes could proceed with his vision of completing the Project, just as any other developer might do. That could include keeping the pre-sales in place if he wished and implementing this hopeful side deal with Aviva and the pre-sale purchasers to see if those interests could be resolved in the fullness of time. Mr. Reyes could have advanced a cash offer — given the Domain financing and the use of the pre-sale deposits with the consents — to compete with the offers of Landa and Solterra.

[76] If that had taken place, I cannot see that anyone would quarrel with the structure of the transaction. In essence, Mr. Reyes would be assuming control of the Project and proceeding with his commercial gambit, just as Landa and Solterra propose to do.

[77] However, Mr. Reyes has not put forward the 129 Revised Offer as a “sale” of the Project. Instead, as noted, 129 seeks a suite of relief under the *CCAA*, including approval of an increase of the secured debt against the Project, which will rank in priority over the other encumbrances. Further, 129 seeks to alter the commercial terms of the existing CMLS debt and security including increasing the interest rate on the secured loan. Crucially, as I will explain below, 129 also seeks an extension on the stay of creditors' rights without any indication that it will put

forward a plan of arrangement or compromise on which the Petitioners' creditors may vote.

Is the 129 Revised Offer appropriate in the circumstances?

[78] The anchor on which Mr. Reyes argues that the 129 Revised Offer and extended stay of proceedings is appropriate is the suggestion that it will allow the Petitioners to secure new construction financing to repay the New Loan Facility and proceed with the Project as intended. Mr. Reyes suggests in argument that there is a "realistic prospect" in the future that 129 will be able to secure new construction financing to permit some, or potentially full, recovery by the "Other Creditors".

[79] 129's proposed "Restructuring Plan" is set out in its Notice of Application:

> 27. [129's] offer is a refinancing, it is not seeking to terminate any pre-sale contracts or vest off or compromise any claims against the Petitioners.
>
> 28. <u>The transaction is designed to create an opportunity to secure new construction financing that will allow the Petitioners to repay the New Loan Facility and exit *CCAA* proceedings</u>. As a result, [129's] offer is coupled with an extension to the Stay of Proceedings to allow the Petitioners time to secure new construction financing.
>
> 29. [129] is confident that, following refinancing, the Petitioners will secure new construction financing. The Petitioners are in advanced discussions with at least one lender. Additional lenders have conducted extensive due diligence.
>
> 30. These *CCAA* proceedings have, to date, been focused on repayment of the CLMS Facility. The New Loan Facility, along with cooperation from Domain, will provide the opportunity to shift the focus to a long-term restructuring.
>
> 31. Securing new construction financing requires interim steps that are predicated on having control of the Terrace House Project. The steps include:
>
>> (a) Review of all trades and consultants. This includes confirm drawings and specifications with lead consultants, architects and engineers; updating contracts with existing trades and consultants; and replacing contracts as necessary;
>>
>> (b) Confirm construction schedule and budget;
>>
>> (c) Renew and extend permits; and
>>
>> (d) Review and continue pre-sale program. This includes reviewing the existing contracts; engaging new marketing partners

> and sales group, and may require re-drafting the disclosure statement and updated purchase contracts.
>
> 32. Interim working capital will be funded by existing limited partners and new third party investors. This working capital is expected to be in the range of $3 to $5 million, which will be sourced, externally and will not encumber the Lands or other assets.
>
> 33. With control of the Terrace House Project and the breathing room provided by the New Loan Facility, it is estimated that completing the interim steps outlined above and finalizing a term sheet a new construction lender will take 30 to 60 days.
>
> [Emphasis added.]

[80] In essence, 129's plan is to use the proposed six-month stay extension to secure construction financing with the intention then of exiting these *CCAA* proceedings and completing the Project. This makes sense from a business point of view — that way, Mr. Reyes satisfies his obligations to Aviva by allowing the pre-sale purchasers to obtain their units by crediting their deposits, thus avoiding a call on Aviva's deposit insurance.

[81] Centura argues that 129 seeks to implement this "restructuring" transaction without the consent of the affected creditors. Further, Centura says that there is no indication that any party intends to put forward a plan of arrangement or compromise on which the Petitioners' creditors may vote.

[82] Centura says the present circumstances are similar to those considered in *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327. I agree. In that case, the debtor had obtained a *CCAA* stay of proceeding and approval of interim financing to continue to pursue development of a real estate project. There was no suggestion that the debtor intended to propose a plan of arrangement to the creditors (para. 35).

[83] Consistent with the comments in *Callidus* 12 years later, Justice Tysoe emphasized that the imposition of the stay must be consistent with the fundamental statutory objectives of the *CCAA,* including "to facilitate compromises and arrangements between companies and their creditors" as expressed in the statute's long title: *Cliffs Over Maple Bay* at paras. 26-29.

[84] Tysoe J.A. held that a stay was not appropriate in those circumstances, stating:

> [38] … What the Debtor Company was endeavouring to accomplish in this case was to freeze the rights of all of its creditors while it undertook its restructuring plan without giving the creditors an opportunity to vote on the plan. <u>The *CCAA* was not intended, in my view, to accommodate a non-consensual stay of creditors' rights while a debtor company attempts to carry out a restructuring plan that does not involve an arrangement or compromise upon which the creditors may vote.</u>
>
> [Emphasis added.]

[85] In *North American Tungsten Corporation Ltd. (Re)*, 2015 BCSC 1376, this Court stated:

> [26] When granting an extension, it is a prerequisite for the petitioner to provide evidence of what it intends to do in order to demonstrate to the court and stakeholders that extending the proceedings will advance the purpose of the *CCAA*. The debtor company must show that it has at least “a kernel of a plan”: *Azure Dynamics Corporation (Re)*, 2012 BCSC 781.

[86] I agree that it is not necessary for a debtor to put forward a fully fleshed out plan of arrangement in order to justify a continuation of the stay in *CCAA* proceedings. What will constitute a “kernel of a plan” will depend on the overall circumstances, including the status of the proceedings.

[87] Centura emphasizes that there is no suggestion — let alone a “kernel of a plan” — anywhere in Mr. Reyes’ Affidavits #2, #3 or #4 to support that 129, the Petitioners or any other party intend to put forward a plan of arrangement or compromise on which the Petitioners’ creditors may vote. Having reviewed those affidavits carefully, I agree. All Mr. Reyes speaks of is securing the new construction financing and then restructuring the limited partnership interests.

[88] Specifically, there is no evidentiary foundation in Mr. Reyes’ Affidavits to support the statement at para. 34 of 129’s notice of application that 129 will use the “breathing space” under a further stay of proceedings to “permit some, or potentially full, recovery by Aviva and the Other Creditors”.

[89] Centura also points to other issues arising from the feasibility of completing the Project with the pre-sale purchase contracts intact. Centura notes that, even if the “new construction financing” is obtainable, which is speculative at best, Mr. Reyes will also have to solve his liability problems with Aviva in that context. It is anyone’s guess that the completion of the Project is still feasible while also allowing for a full credit of over $16 million from the pre-sale deposits (which would reduce sale revenues). There is no evidence as to how that might be addressed.

[90] It is apparent from the entire circumstances here that Mr. Reyes is only seeking to allow *himself* some “breathing space” by borrowing money against the Project, by satisfying or keeping the secured creditors at bay while he seeks a better overall resolution than an outright sale that would crystallize his exposure to CMLS and Aviva. He seemingly requires that this Court assist him in freezing the rights of the Petitioners’ creditors while he seeks to do so. There is nothing to suggest that Mr. Reyes is seeking to obtain relief from this Court for the purposes of resolving the current creditor claims against the Petitioners within the context of these *CCAA* proceedings.

[91] In other words, Mr. Reyes seeks the benefit of these proceedings — including the continuation of a stay against all creditors and with the potential for further relief, with the consent of Domain – with no true intention to address those creditor claims in the future.

[92] In all of these circumstances, and for the above reasons, I conclude that the relief sought by 129 is not appropriate, including the stay and the refinancing approvals in 129’s draft order. I decline to exercise my statutory discretion under s. 11 of the *CCAA* to grant the requested relief.

<u>WHICH OFFER SHOULD BE APPROVED?</u>

[93] Without the 129 Revised Offer, the remaining issue is what other offers should be considered by the Court and, if appropriate, approved.

[94] Solterra takes the position that the Court should disregard the offers received after May 25, 2021 and that the Court should approve Solterra Offer #1 ($21 million). Solterra argues that it adhered to the sales process implemented by the Monitor and that it would be unfair if the Court approved any other offer. Solterra particularly objects to Landa Offer #2, arguing that Landa Offer #1 essentially stood as a stalking horse bid. Solterra refers to Landa Offer #2 as only slightly “beating” Solterra Offer #1 (about 4%), having had the benefit of disclosure of the price under Solterra Offer #1.

[95] The authority of this Court to approve a sale is found in s. 36 of the *CCAA*. Section 36(3) sets out a list of non-exhaustive factors to be considered by the court:

> a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> d) the extent to which the creditors were consulted;
>
> e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[96] In addition, the parties refer to the principles identified in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 at 6 (O.N.C.A.) as helpful in considering whether to approve a sale:

> 1. Whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
>
> 2. The interests of all parties;
>
> 3. The efficacy and integrity of the process by which offers were obtained; and
>
> 4. Whether there has been any unfairness in the sales process.

[97] Various authorities support that, in considering the test under s. 36 of the *CCAA*, the *Soundair* principles remain relevant and indeed overlap with some of the specific s. 36(3) factors: *Veris Gold Corp. (Re)*, 2015 BCSC 1204 at paras. 22-25; *8450025 Canada Inc. and Teliphone Data Centers Inc. (Re)*, 2017 BCSC 1291 at paras. 9-13.

[98] The tension that exists at this hearing, as commonly arises, is between the twin objectives of 1) fairness in the process and 2) outcome or price with regard to the interests of the Petitioners' stakeholders. In framing the issue in this way, I do not mean to suggest that the test is a simple one to apply. The issues here require a consideration of all the s. 36 factors in these unique and unusual circumstances.

[99] Solterra refers to *Cox v. Seymour Village Management Inc.*, 2015 BCSC 275 and *Bank of Montreal v. Renuka Properties Inc.*, 2015 BCSC 2058.

[100] In *Cox*, I was addressing a sales process in partition and sale proceedings. Solterra in particular relies on my statements concerning the fairness of the process. In that case, an early participant in the sales process had advanced a late bid, said by Solterra to be similar to what it describes as Landa's unfair attempt to re-enter the sales process at a late stage: *Cox* at para. 27-28. At para. 29 in *Cox*, I remarked that late offers may be considered by the Court where the price has been substantially increased such that it is likely "indicative of the fact that the sales process did not work…"

[101] Similarly, in *Renuka*, in a receivership, the Court was considering the results of a sales process and a late bid with a substantially increased offer price. I adopt Justice Blok's statement of two of the general principles arising from *Soundair* that were in issue:

> 4. late offers may be considered by the Court on an application to approve a sale only for the limited purpose of considering whether the price obtained by the receiver was a reasonable one. In some cases a disparity may be so great as to call into question the adequacy of the sale process: *Soundair* at paras. 26 and 30.
>
> 5. the primary interest to be considered by the Court is that of the creditors, and to see that the best possible price is obtained, though the interests of all

> parties, including the debtor and the receiver's recommended purchaser, must also be considered: *Soundair* at paras. 39-40. While the primary concern is the interests of the creditors, as noted earlier a secondary but still important consideration is the integrity of the process. Integrity of the process includes the object of reasonably ensuring that there is certainty and finality in sales by receivers: *Soundair* at paras 42-46.

[102] I would begin by stating that the Monitor's fashioning of the sales process was reasonable in all the circumstances. The SISP had many challenges and the collapse of the Bosa transaction was disappointing indeed. I accept that the Monitor intended that Landa Offer #1 would essentially stand as a stalking horse bid, intended to flush out any further cash offers for the Project. The Monitor's disclosure of Solterra Offer #1 was completely understandable give that it considered that Landa had made its best and final offer in Landa Offer #1.

[103] The Monitor properly brought Landa Offer #2 to the attention of the Court at the May 25, 2021 hearing. However, Landa's submission of Landa Offer #2 certainly has the hallmarks of wanting a "second kick at the can". In my view, Solterra's objection to Landa's approach being unfair has some merit.

[104] However, Solterra's submissions in this respect rests on the proposition that the Court should have approved Solterra Offer #1 on May 25, 2021. I agree that, if on that date, the Court had proceeded to consider both Solterra Offer #1 and Landa Offer #2, the result would likely have been approval of Solterra Offer #1. However, that is not what happened. As I have said, the May 25 date was scheduled for the approval of Landa Offer #1 and an adjournment was required in order to give the parties sufficient time after service of the application materials. In addition, the 129 application was then extant and needed to be addressed in relation to the 129 Offer.

[105] On the issue of fairness, Solterra itself acknowledged in Solterra Offer #1 that there was some chance in the later court approval process that the Court might proceed otherwise than to simply approve that offer. That risk is one taken by every participant in a court approved sale process where the possibility of late bids can arise: *Cox* at para. 25. Solterra very much recognized the risk that its offer

might not be accepted. Solterra would have been aware that the Court may have approved another offer or even directed a continuation of the sales process, perhaps with further sealed bidding. In fact, Solterra Offer #1 provided in clause 8.5 that, if the Court approved another bid, it would be reimbursed for its costs up to $50,000.

[106] Needless to say, the landscape changed quite significantly in the two-week period leading up June 4, 2021. Leaving aside the 129 Revised Offer with its ongoing improvements and removal of subjects, there was further jockeying between Landa and Solterra with their June 4, 2021 offers. In short, the submission of Landa Offer #3 and the Solterra Backup Offer to the Monitor are matters that, in my view, the Court should not ignore in terms of considering the various offers.

[107] I have concluded that, although there has been some unfairness in the sales process in relation to Solterra, it is not appropriate that I approve Solterra Offer #1 at this time. Faced with the substantial interest and increasingly higher bids from both Landa and Solterra leading to May 25, 2021, I may have been inclined to order one last round of sealed bids for Landa and Solterra. However, by and large, Landa and Solterra embarked themselves upon a further sealed bid process leading to the June 8, 2021 hearing.

[108] The Monitor emphasizes in its Confidential Seventh Report that the price under Solterra Backup Offer was increased by a significant sum, in the millions of dollars and well above that of Landa Offer #3. It will satisfy the priority debt - the professional charges and the Interim Lending Facility - and provide almost full payment to CMLS.

[109] The Monitor has not expressed any specific recommendation to the Court in respect of which bids should be considered, or approved, choosing to remain agnostic as between the options open to the Court (including in relation to the 129 Revised Offer with or without a backup offer).

[110] I appreciate that this sales process has charted a very long and crooked path, through no fault of anyone. This is a complex asset and the stakeholder interests are equally complex.

[111] The time has come to end the process. I am satisfied that the Monitor has now explored all available options. Those options have been put before the stakeholders and now the Court. I am also satisfied that Solterra Backup Offer should now be approved as reasonable and indicative of the fair market value of the Project. It is unfortunately a result that does not see any immediate recovery for Aviva, although neither did the 129 Revised Offer. In my view, Solterra Backup Offer represents the best outcome for the stakeholders in all the circumstances.

CONCLUSION

[112] Solterra Backup Offer is approved.

[113] I am also satisfied Solterra Backup Offer should be approved with the RVO structure. No person objected to the sale being completed in this fashion. This is not surprising as it is evident that the RVO structure will garner significant benefits to the stakeholders: *Quest University Canada (Re)*, 2020 BCSC 1883; leave denied *Southern Star Developments Ltd. v. Quest University Canada*, 2020 BCCA 364.

“Fitzpatrick, J”

CA 47585

VANCOUVER
JUL 05 2021
COURT OF APPEAL
REGISTRY

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

COURT OF APPEAL

IN THE MATTER OF THE *COMPANIES CREDITORS ARRAGNEMENT 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 COMPRMOSIE 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)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Take notice that 1296371 B.C. Ltd. hereby applies for leave to appeal to the Court of Appeal for British Columbia from the orders of Madam Justice Fitzpatrick of the Supreme Court of British Columbia pronounced the 15th day of June, 2021, at Vancouver, British Columbia (i) dismissing the application of 1296371 B.C. Ltd. ("**129**") to, *inter alia*, approve a refinancing transaction (the "**129 Revised Offer**"); and (ii) granting the application of Port Capital Development (EV) Inc. and

Evergreen House Development Limited Partnership (collectively, the "**Petitioners**") to, *inter alia*, approve the sale of certain assets to Solterra Acquisitions Corp. ("**Solterra**").

1. The appeal is from a:

☐ Trial Judgment ☐ Summary Trial Judgment
☐ Order of a Statutory Body ☒ Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules, name the maker of the original decision, direction or order: N/A

3. Please identify which of the following is involved in the appeal:

☐ Constitutional/Administrative ☐ Civil Procedure ☒ Commercial
☐ Family ☐ Motor Vehicle Accidents ☐ Municipal Law
☒ Real Property ☐ Torts ☒ Equity
☐ Wills and Estates

And further take notice that the Court of Appeal will be moved at the hearing of this application for an order that:

1. the hearing of this application for leave to appeal and if leave is granted, the appeal, be heard on an expedited basis;

2. the time for filing and serving of this application for leave to appeal and stay of proceedings, the Notice of Motion, and the appellant's Motion Book for leave to appeal be abridged;

3. 129 be granted leave to introduce evidence that arose after pronouncement of the above noted orders;

4. execution of and proceedings on the orders of Madam Justice Fitzpatrick pronounced June 15, 2021, be stayed pending appeal; and

5. Such further and other relief as to this Honourable Court seems just.

And further take notice that, if leave is granted, the appellant will request that the Court of Appeal convene a five-justice division to hear the appeal based on the following reasons:

1. there is good reason for the Court of Appeal to reconsider *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327; and

2. *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327, ought to be overruled because it no longer reflects current judicially endorsed practices under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

The grounds of appeal are:

1. the learned chambers judge erred in fact and law in holding that the 129 Revised Offer was not a redemption and as a result erred in law by failing to consider the Petitioners' equity of redemption;

2. the learned chambers judge erred in fact and law in holding that it was not appropriate to grant 129's application; and

3. the learned chambers judge erred in law in approving the Petitioners' application, in the face of the proposed redemption pursuant to the 129 Revised Offer.

The hearing of this proceeding occupied 1.5 days.

Dated at Vancouver, British Columbia, this 5th day of July, 2021.

Jordan Schultz
Solicitor for the Appellant

To the respondent(s):	Service List attached hereto as Schedule "A"
And to its solicitor:	Service List attached hereto as Schedule "A"
This Notice of Leave to Appeal is given by	Jordan Schultz of Dentons Canada LLP
whose address for service is:	20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8 (attn: Jordan Schultz)

To the respondent(s):

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

(a) you are deemed to take no position on the application, and

(b) the parties are not obliged to serve you with any further documents related to the application.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248 STN PROV GOVT
850 Burdett Avenue
Victoria, BC V8W 1B4

B.C. Court of Appeal
223 – 455 Columbia Street
Kamloops, BC V2C 6K4

Inquiries should be addressed to: (604) 660-2468
Fax filings: (604) 660-1951

SCHEDULE "A"

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

<u>SERVICE LIST</u>

UPDATED: May 25, 2021

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NATHANSON, SCHACHTER & THOMPSON LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4 Peter J. Reardon – preardon@nst.ca	*Counsel to David MacKenzie (Limited Partner)*

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TAB 16

ORDER GRANTING LEAVE TO APPEAL DATED AUGUST 20, 2021

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COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd.,* 2021 BCCA 319

Date: 20210820
Docket: CA47585

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) 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)

Corrected Judgment: The text of the judgment was corrected at paragraph 1 on August 26, 2021.

Before: The Honourable Mr. Justice Goepel
The Honourable Mr. Justice Voith
The Honourable Mr. Justice Marchand

On appeal from: An order of the Supreme Court of British Columbia, dated June 15, 2021 (*Port Capital Development (EV) Inc. (Re)*, 2021 BCSC 1272, Vancouver Docket S-205095).

Oral Reasons for Judgment

Counsel for the Appellant:	J.D. Schultz E. Watson
Counsel for the Respondents, Centura Building Systems (2013) Ltd. and Solterra Acquisitions Corp.:	K.M. Jackson T.A. Posyniak G.P. Nesbitt
Counsel for the Respondents, Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership:	D.E. Gruber
Counsel for CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company:	C.D. Brousson A.L. McCawley
Counsel for Ernst & Young Inc. in its capacity as the Monitor:	P. Bychawski
Counsel for Aviva Insurance Company of Canada:	W.L. Roberts
Place and Date of Hearing:	Vancouver, British Columbia August 17, 2021
Place and Date of Judgment:	Vancouver, British Columbia August 20, 2021

Summary:

The petitioners owned a commercial strata development that experienced financial difficulties when the construction lender stopped funding and demanded repayment of its secured debt. The petitioners sought and received an order under the Companies' Creditors Arrangement Act, staying proceedings against them and implementing a sales and investment solicitation plan. Several offers were forthcoming, including one by the appellant. The chambers judge rejected the appellant's offer but approved the project's acquisition by one of the respondents. The appellant seeks leave to appeal and a direction that the appeal be heard by a five-justice division to allow reconsideration of Cliffs over Maple Bay Investments Ltd. v. Fisgard Capital Corp., 2008 BCCA 327 [*Cliffs*]..

Held: Leave to appeal granted; appeal directed to be heard by a five-justice division. How the equity of redemption should be treated in an analysis under the Companies' Creditors Arrangement Act when faced with competing transactions and whether the intention to propose a plan of arrangement to creditors is a necessary precondition to relief were issues of significance. Whether the holding in Cliffs barred the appellant's proposal was highly relevant to the appeal. It was in the interests of justice for the division hearing the appeal to be able to reconsider the decision if necessary.

<u>INTRODUCTION</u>

[1] **GOEPEL J.A.** 1296371 B.C. Ltd. ("129") seeks leave pursuant to s. 13 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [*CCAA*] to appeal the June 15, 2021 orders of Justice Fitzpatrick, which dismissed 129's application to approve a proposed refinancing and granted the application of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (together, "the Petitioners") for the sale to Solterra Acquisition Corp. ("Solterra") of the Terrace House Project (the "Project"), a residential strata development located in downtown Vancouver. The chambers judge's reasons are indexed at 2021 BCSC 1272. If leave is granted, 129 seeks a direction that the appeal be heard by a five-justice division to allow reconsideration of *Cliffs over Maple Bay Investments Ltd. v. Fisgard Capital Corp.,* 2008 BCCA 327 [*Cliffs*].

[2] When the decision being challenged is based on binding authority from the court, a single justice cannot grant leave. In such circumstances, the leave application is heard by a division of the court and the division has the authority, in turn, to direct the appeal be heard by a five-justice division: *Sangha v. Reliance*

Investment Group Ltd., 2010 BCCA 340 (Chambers); *R. v. Zora,* 2018 BCCA 34 (Chambers); *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.). For this reason, this leave application was heard by a division of the Court rather than a single justice.

[3] There is some urgency attached to this proceeding. The sale of the Project approved by the chambers judge is scheduled to close on September 30, 2021. If leave is granted, the parties have arranged that the appeal will be heard on September 21, 2021.

BACKGROUND

[4] The Project is a proposed 19-storey high-rise luxury residential and commercial strata development located at 1250 West Hastings Street, Vancouver. The Project provides for 20 residential units and two commercial retail units above a three-level underground parking arcade. The Petitioners are the owners of the Project.

[5] The Petitioners entered into these *CCAA* proceedings to allow them to undertake a process towards resolution of their financial difficulties that would allow them to complete the Project. In her reasons, the chambers judge set out in detail the history of the Project and the *CCAA* proceedings leading up to the orders for which leave is now sought: at paras. 5–42. In these reasons, I will refer to that background information only to the extent necessary to give context to the issues arising on this application.

[6] In September 2017, presales of the units began. In late 2018, construction began. The construction lender is CMLS Financial Ltd. (“CMLS”), which holds a first mortgage against the Project. Aviva Insurance Company of Canada (“Aviva”) provided deposit protection insurance for the presale depositors in order to allow the Petitioners to use the deposit money for the Project. Aviva holds a second mortgage against the Project to secure any claims under the insurance.

[7] As of mid-2020, the parkade and structure for the first level of the building were substantially complete, and approximately 20% of the Project was finished. At that time, approximately $16 million in presale deposits was in place for 17 residential units and both commercial units. Approximately $8 million of the deposit money has been spent on the Project.

[8] In May 2020, CMLS stopped funding and demanded payment of its secured debt. In late May 2020, the Petitioners filed these *CCAA* proceedings, supported by the evidence of Macario Reyes, a director and officer of the Petitioners. At that time, the evidence was that the Petitioners owed approximately $34.8 million secured debt and $8 million unsecured and lien debt. One of the lienholders is Centura Building Systems (2013) Ltd. ("Centura"), which is owed $473,277.

[9] On May 29, 2020, the chambers judge granted the initial order in the *CCAA* proceedings. The initial order stayed all proceedings against the Petitioners, granted an Administration Charge of $250,000, and appointed Ernst & Young Inc. as monitor (the "Monitor"), with enhanced powers to assume control of the Petitioners and the Project. Specifically, the Monitor was directed to implement a sales and investment solicitation plan ("SISP") with input from CMLS and Aviva. The SISP sought a "dual-track" process to either produce bids or offers for a sale of the Project, or an investment in the Petitioners on a going-concern basis, such as in the form of a restructuring, reorganization, or refinancing of the Project.

[10] On June 8, 2020, the chambers judge granted the Amended and Restated Initial Order, extending the stay and other relief granted under the initial order and authorizing interim financing of $1.25 million—now $1.8 million—(the "Interim Lending Facility") from Desjardins Financial Security Life Assurance Company ("Desjardins"), a company affiliated with CMLS.

[11] Over the next several months, as detailed in the judge's reasons, various offers were forthcoming. Ultimately, at the time of the June 8, 2021 hearing, the chambers judge had before her two offers from Solterra ("Solterra Offer #1" and "Solterra Backup Offer"), an offer from Landa Global Acquisitions Inc. ("Landa Offer

#3"), and an offer from 129 ("129 Revised Offer"). 129 is a company controlled by Mr. Reyes and was incorporated to facilitate the proposed refinancing.

[12] The Solterra and Landa offers were asset purchase agreements. The 129 proposal contemplated a complex refinancing of the Project that would repay the Administration Charge, the Interim Lending Facility, and CMLS in full and take an assignment of the CMLS security. 129 said that the transaction was designed to create an opportunity to secure new construction financing that would allow the Petitioners to ultimately repay the new loans, exit *CCAA* proceedings, and proceed with the Project as intended.

[13] The chambers judge said that the crux of the issues relating to the 129 Revised Offer lay in the *CCAA* relief that Mr. Reyes and 129 say they must obtain from the court. She summarized that relief as follows:

> [48] The crux of the issues relating to the 129 Revised Offer lies in the *CCAA* relief that Mr. Reyes and 129 say they must obtain from the Court. They seek the following Court approval and orders, said to be necessary to implement the 129 Revised Offer:
>
> a) an extension of the stay of proceedings to December 11, 2021;
>
> b) Authorization to release the pre-sale deposits to 129 to allow 129 to pay $8 million to CMLS for the purchase and assignment of the CMLS security, to stand as an advance by 129 to the Petitioners secured by the CMLS security. All of these pre-sale purchasers consent to the release of the deposits;
>
> c) Authorization to borrow up to $750,000 from [1260780 B.C. Ltd. ("126")] for the "working capital" loan and approval of the terms of the commitment letter. Contrary to Mr. Reyes' statement that this would "likely" require a restructuring of the partnership interests, the Court is being asked to bless the commitment letter to seemingly grant 126 the "right, in its sole discretion" to convert the debt into limited partnership units that *will be* preferential to all classes of existing units in the limited partnership;
>
> d) The "Refinancing Transaction" involves granting Court approval to the Petitioners to borrow money from Domain to fund the Interim Lending Facility and repay CMLS in full and take an assignment of the CMLS security, up to $25 million. This "Refinancing" or "New Loan Facility" is to be documented in the usual fashion, with the significant proviso that the Petitioners are authorized to agree to amendments so as to provide that the CMLS security would secure *all obligations* of the Petitioners to both Domain, 126 and

> 129 (i.e. about $25 million) and stand as a first secured charge on the Project.
>
> [Emphasis in original.]

[14] The Monitor reported that if the 129 Revised Offer completed, it would result in a materially better outcome for the stakeholders than either the Solterra or Landa offers.

[15] The chambers judge summarized the financial consequences to the major secured creditors of the various offers as follows:

> [42] In broad strokes, as of June 8, 2021, the financial consequences to the two major secured creditors of the various offers before the Court were as follows:
>
> a) Under the Solterra and Landa cash offers, the Interim Lending Facility and priority professional fees would be paid. In addition, CMLS would suffer a shortfall to varying degrees: Solterra Offer #1 — $3.2 million shortfall; Landa Offer #3 — $1.7 million shortfall; and Solterra Backup Offer — a shortfall in excess of $500,000;
>
> b) Under any of the cash offers, the Petitioners would disclaim the $16 million of pre-sale agreements. Aviva would immediately crystalize its exposure (estimated at $8.6 million). Both CMLS and Aviva hold security against the $8 million cash deposits. CMLS/Aviva would then potentially advance arguments that these pre-sale purchasers had forfeited the right to a return of those cash deposits such that CMLS/Aviva could claim those amounts toward satisfaction of their loans; and
>
> c) Under the 129 Revised Offer, the material benefits, as noted by the Monitor were: 1) the Interim Lending Facility and CMLS would be paid in full; 2) Aviva's security position would be "improved" with the prospect of full or material recovery; and 3) the parties would avoid litigation with respect to the $8 million in pre-sale cash deposits by converting them into a secured position against the Project.

[16] 129 brought its application and rested its arguments on s. 11 of the *CCAA* as the jurisdictional basis upon which it asked the court to grant the relief sought. Section 11 allows the court broad discretion to grant relief that is "appropriate in the circumstances."

[17] At the hearing on June 8, the 129 application to approve the 129 Revised Offer was supported by CMLS and Aviva. CMLS' support was conditional on the

court approving either the Landa or Solterra offers as a backup in case the 129 Revised Offer did not complete. The Petitioners and the Monitor took no position on the 129 application. The 129 application was opposed by Centura and Solterra.

THE CHAMBERS JUDGE'S REASONS

[18] The chambers judge first considered whether she should approve the 129 Revised Offer. She found that the relief sought by 129 was not appropriate, including the stay and the refinancing approvals in 129's draft order. She declined to exercise her statutory discretion under s. 11 of the *CCAA* to grant the requested relief. In reaching this decision, she concluded, among other things:

a) the 129 refinancing was not a redemption of the CMLS mortgage;

b) 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 financing was appropriate;

c) the 129 refinancing might not have been objectionable if it had been structured as a sale, whether via an outright sale or a reverse vesting order; and

d) the circumstances of this case were similar to those in *Cliffs*, and since there was no evidence of an intention to propose a plan of arrangement or compromise to creditors, the 129 financing was not appropriate.

[19] Having found the 129 offer was not appropriate, the chambers judge then went on to consider the two competing cash offers. She found that the Solterra Backup Offer should be approved as reasonable and indicative of the fair market value of the Project. That offer would satisfy the priority debt, the professional charges, and the Interim Lending Facility—and provide almost full payment to CMLS. Aviva would face a shortfall of $8.6 million with limited prospect of any recovery. All other creditors would also be "out of the money."

GROUNDS OF APPEAL

[20] 129 now seeks leave to appeal. It submits the chambers judge erred:

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

b) in fact and law by 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

c) in law by approving the Solterra offer in the face of the 129 refinancing, which would clearly result in a better outcome for all stakeholders and is consistent with the remedial purposes of the *CCAA*.

[21] Aviva supports the leave application. It is opposed by Centura, Solterra, CMLS, and Desjardins. The Monitor takes no position on the application. The Petitioners, notwithstanding that on July 30, 2021, they entered into a revised interim financing agreement with 129 and that they and 129 are controlled by Mr. Reyes, oppose the leave application. When questioned in regards to the contradictory nature of those positions, counsel for the Petitioners advised that in opposing the application for leave, he was acting on the Monitor's instructions. The Monitor acknowledged it had given such instructions but was unable to provide the basis on which it was entitled to do so.

POSITIONS OF THE PARTIES

A. 129

[22] 129 submits that the chambers judge erred in concluding that the 129 refinancing was not a redemption of the CMLS mortgage. In this regard, the chambers judge said:

> [56] 129 describes the transaction in its application materials as a "redemption financing" and counsel submits that it is "effectively" a redemption of the CMLS mortgage. Centura refers to well-settled law that the

> right of redemption in these circumstances allows the subordinate mortgagee (Aviva), not the mortgagor (the Petitioners), to redeem the CMLS mortgage by paying it out and taking an assignment of the security: *Classic Mortgage Corporation v. 0768723 B.C. Ltd.,* 2017 BCSC 1100 at paras. 13-16.
>
> [57] This transaction is not a redemption of the CMLS mortgage. The Petitioners are not paying CMLS. Aviva is not paying CMLS, although I acknowledge that Aviva consents to CMLS being paid out by 129/Domain and the assignment of the CMLS mortgage to Domain/Newco. While there are features of this transaction that one might see in a redemption scenario, this is well beyond a redemption by which the CMLS security is simply assigned to Domain. In fact, Domain is not content with the existing terms of the CMLS security; it requires that the terms of the CMLS security be amended.

[23] While 129 does not quarrel with the broad proposition that the right of redemption allows only the subordinate mortgagee, not the mortgagor, to redeem, it submits that rule is subject to an exception that allows the mortgagor to redeem the first mortgage if it is done with the consent of the second mortgagee: *Classic Mortgage Corporation v. 0768723 B.C. Ltd.,* 2017 BCSC 1225 at para. 43. In this case, Aviva consents to the redemption.

[24] 129 submits that an owner's right to redeem is a core principle of real estate law: *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge, Inc.,* 2020 ONSC 3659 at paras. 37–40. 129 submits it was an error in principle for the chambers judge not to consider the right of redemption in weighing whether it was appropriate to approve the 129 Revised Offer. 129 submits that if the chambers judge had correctly determined that the 129 offer was a redemption, the appropriateness analysis may have been significantly different.

[25] 129 further submits that the chambers judge erred in principle in concluding that the 129 refinancing was not appropriate. In this regard, she failed to consider all of the circumstances and instead focused her analysis on only one issue, namely, the lack of evidence of an intention to propose a plan of arrangement or compromise to all the creditors.

[26] 129 submits that the chambers judge's analysis is premised on the basis that *Cliffs* stands for the broad principle that a debtor must provide evidence of its

intention to propose a plan of arrangement to creditors in order to obtain relief under the *CCAA.* In support of this submission, it points to the judge's comment at para. 77, where she said, "Crucially … 129 also seeks an extension on the stay of creditors' rights without any indication that it will put forward a plan of arrangement or compromise on which the Petitioners' creditors may vote."

[27] 129 submits that if the chambers judge is correct and that *Cliffs* stands for that broad principle, a five-justice division should reconsider *Cliffs*. In support of its submission that the remedial objectives of the *CCAA* are broader than articulated in *Cliffs*, 129 relies on the subsequent decisions of the Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General),* 2010 SCC 60 and *9354-9186 Québec inc. v. Callidus Capital Corp.,* 2020 SCC 10 [*Callidus*]. In the alternative, 129 submits that, if *Cliffs* does not stand for that broad proposition, the chambers judge erred in her interpretation of *Cliffs.*

[28] 129 submits, in the circumstances of this case, the chambers judge's concerns for the rights of creditors ranked below Aviva was misplaced because those creditors will not recover anything from either of the proposals. It submits the appropriateness analysis should have centred on the outcome for parties who stood to benefit from the 129 Revised Offer. In particular, it notes that under the 129 Revised Offer, CMLS will be paid in full, Aviva may escape any exposure, and the pre-purchasers will not lose their rights to purchase a unit in the Project.

[29] 129 says the chambers judge's error is clearly illustrated by her comments at para. 73:

> [73] Again, as already stated, 129 does not seek relief under s. 11.2 of the *CCAA*. 129's counsel only suggests that its "refinancing" is appropriate in disregarding the interests of the other creditors, including the lienholders, since they are currently "out of the money". I agree with 129's counsel's assessment of the likely current monetary value of the other creditor's interests. However, in my view, that is a very unprincipled basis upon which to argue that this "refinancing" is an "appropriate" outcome in the balancing exercise with regard to all stakeholders.

B. Aviva

[30] Aviva supports 129's application for leave and adopts its submissions. It submits the issues raised in the proposed appeal have merit and are significant to the parties and to the practice. Aviva submits it may not be necessary to reconsider *Cliffs*, as the chambers judge erred in law and fact by failing to recognize that *Cliffs* is distinguishable and further erred in law in her interpretation of *Cliffs* by failing to consider the expanded formulation of the *CCAA*'s remedial purpose in more recent and binding authorities. Aviva submits, however, that if this Court finds *Cliffs* is binding authority in British Columbia for the 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*, then Aviva agrees with 129 that *Cliffs* ought to be reconsidered by a five-justice division.

[31] Aviva submits that the chambers judge erred in her analysis by focusing on the structure of the 129 offer instead of its impact on the various stakeholders.

[32] Aviva submits the appeal is of particular significance to it. If the sale to Solterra completes, Aviva will immediately lose $8.6 million with limited prospects of recovery. This result may be avoided entirely if the 129 refinancing is approved.

[33] Aviva further submits that the chambers judge erred by failing to appreciate the two-staged nature of the 129 plan. In the first stage, CMLS would be paid in full, and the Project would remain in *CCAA* protection as it attempted to raise new construction financing that, if received, would allow the Project to be completed as originally contemplated. In those circumstances, Aviva and other creditors may have the chance of escaping unscathed.

[34] Aviva submits the judge failed to consider other countervailing factors in her appropriateness analysis, including Aviva's right to redeem and the Petitioners' right to compel an assignment of the CMLS mortgage. Aviva submits that the chambers judge's emphasis that the 129 offer does not deal with the claims of other creditors is misplaced. In that regard, Aviva points out that the concern for the creditors other

than CMLS and Aviva is artificial because those creditors will not recover anything under the approved Solterra offer.

C. Centura/Solterra

[35] Centura and Solterra are related companies. Solterra's offer to purchase the assets of the Project was approved subsequent to the judge dismissing the application of 129. Centura is a creditor who will receive nothing under either proposal. Notwithstanding their very different roles, they are represented by the same counsel.

[36] In their submissions before the chambers judge, Centura/Solterra opposed the 129 offer, and on this application, they oppose the granting of leave. On this application, they noted that leave is granted sparingly in *CCAA* proceedings. They submit that the appeal is without merit. They submit that the chambers judge was entitled to and did take note of the fact that there was no evidence of any intention on the part of 129 or the Petitioners to resolve or even address the claims of creditors affected by their proposed refinancing transaction, let alone seek approval of those transactions from affected creditors by proposing a plan on which the creditors could vote. They submit the judge was properly concerned about the commercial viability of the overall restructuring plan and found that the new construction financing 129 intended to secure at a later date was "speculative at best."

[37] Centura/Solterra submit that 129's arguments conveniently ignore the interest of all other stakeholders, including lienholders, which would be prejudiced by the order sought by 129. They submit that, in these circumstances, there is no basis on which one could suggest that 129 had found common ground amongst the stakeholders, notwithstanding that both CMLS and Aviva, the two parties directly affected by the proposals, were generally supportive of the 129 offer.

[38] Centura/Solterra submit that the proposed appeal raises no points of interest to the practice and that the judge's decision involved the exercise of her discretion with reference to established authorities. They submit there is no precedent for the

CCAA relief that 129 sought from the court and that the chambers judge did not err in refusing the application.

[39] Centura/Solterra put particular emphasis on the fact that the appeal will unduly hinder the progress of the action. They point out that the Solterra sale must close before the end of September 2021 and that if the appeal is allowed to go forward, there is a risk that either the Petitioners or Solterra may terminate the sales agreement. They submit leave, if granted, will create uncertainty as to the time of completion of the Solterra sale or whether it can be completed at all.

[40] Centura/Solterra also point out that there is no certainty that 129's plan will come to fruition, let alone in a timely fashion. In this regard, they note there is no assurance that anyone other than CMLS will make any recovery. In these circumstances, they submit that it is not in the interest of justice to grant leave.

[41] Centura/Solterra submit the Court should refuse the request for a five-justice division. In that regard, they submit that the judge could have exercised her discretion in the same way without reference to *Cliffs*. They further submit that *Cliffs* is not inconsistent with the subsequent Supreme Court of Canada authorities.

D. CMLS and Desjardins

[42] CMLS and Desjardins also oppose the request for leave. They do so because they doubt the ability of 129 to complete the proposed refinancing, notwithstanding that if the 129 financing completes, CMLS will be made whole. They submit that if leave is granted, it will unduly hinder the progress of the action. In this regard, they submit that if leave is granted and a five-justice division is allowed to hear the appeal, there is no certainty of a decision being reached before the September 30, 2021 closing date of the sale to Solterra. Even if a decision was reached in favour of 129 before September 30, 2021, the 129 refinancing is not set to fund until late October 2021. In these circumstances, CMLS submits there is jeopardy that the Solterra sale could be lost.

[43] In addition, CMLS submits that any delay will cause it significant prejudice. In that regard, it notes that priority funding ahead of CMLS includes payment of professional fees of the Monitor and its legal counsel as well as the Petitioners' counsel. The appeal will necessitate further payment to these groups of professionals, as well as CMLS and Desjardins incurring their own increased legal fees. These additional expenses will reduce the amount of funds available for recovery to CMLS if ultimately the appeal is dismissed or if the 129 Revised Offer is approved but 129 does not complete.

E. The Petitioners

[44] As noted, the Petitioners, although taking no position in the court below on this application, opposed leave on the basis it would unduly hinder the progress of the action. In this regard, it echoed the submissions of CMLS that the appeal would serve only to divert limited resources and also risk the closing of the Solterra transaction. The submissions of the Petitioners are, however, somewhat artificial. The Petitioners have entered into the interim financing agreement with 129. Mr. Reyes is a principal of both the Petitioners and 129. The Petitioners' submissions on this application were apparently dictated to them by the Monitor, which itself refused to take a position. In these circumstances, the weight to be given to these submissions is limited.

TEST FOR LEAVE

[45] The test to be applied in determining whether leave to appeal should be granted is set out in *Goldman, Sachs & Co. v. Sessions,* 2000 BCCA 326:

1. Is the point on appeal of significance to the practice?

2. Is the point raised of significance to the action itself?

3. Is the appeal *prima facie* meritorious or frivolous?

4. Will the appeal unduly hinder the progress of the action?

[46] The criteria for leave are “all considered under the rubric of the interests of justice”: *Vancouver (City) v. Zhang,* 2007 BCCA 280 at para. 10.

[47] Where leave is sought to appeal a discretionary order, the third factor requires an assessment of “whether there is an arguable case that the chambers judge erred in principle, made an order that is not supported by the evidence, or whether the order appealed will result in an injustice”: *Hagwilneghl v. Canadian Forest Products Ltd.,* 2011 BCCA 478 at para. 31. The applicants must establish a reasonable possibility that a division of the Court of Appeal would grant the appeal on its merits: *Webb v. Canada (Attorney General),* 2019 BCCA 288 at para. 15.

[48] For reasons explained by Justice Tysoe in *Edgewater Casino Inc. (Re),* 2009 BCCA 40, leave to appeal from *CCAA* orders is given sparingly. This is because in most cases the orders are discretionary in nature, and if leave is granted, it might unduly disrupt the ongoing *CCAA* proceedings.

DISCUSSION

A. Is the appeal significant to the practice?

[49] I agree with the appellant that the questions concerning how the equity of redemption should be factored into an analysis under the *CCAA* when faced with competing transactions and whether an intention to propose a plan of arrangement or compromise to creditors is a necessary precondition to relief under the *CCAA* raise issues of significance to the practice. While I agree with Centura/Solterra that there is no precedent for some of the relief sought, that in itself is not a basis to deny leave. To paraphrase Justice Fitzpatrick in *Quest University Canada (Re),* 2020 BCSC 1883 at paras. 153–154, leave to appeal ref’d *Southern Star Developments Ltd. v. Quest University Canada,* 2020 BCCA 364, the history of *CCAA* jurisprudence under the court’s broad statutory discretion is littered with court approval of innovative solutions. The question is whether the particular solution meets the remedial objectives of the *CCAA*: *Callidus* at para. 49.

B. Is the point of significance to the action itself?

[50] The appeal is obviously of significance to the parties. On the one hand, Solterra is currently the approved purchaser of the Project. On the other hand, 129 seeks to refinance the Project and proceed with the Project for the benefit of all creditors. The appeal is of particular significance to Aviva. If leave is denied, it stands to lose $8.6 million with little hope of recovery.

C. Is the appeal *prima facie* meritorious or frivolous?

[51] The answer to this question requires a consideration of the grounds of appeal. In this case, the parties are not in agreement as to whether the orders were strictly discretionary. If the decision below is considered a purely discretionary order, there must be an arguable case that the chambers judge erred in principle, made an order that was not supported by the evidence, or made an order that would result in an injustice. Even if the order is considered to be discretionary, the appellant has raised an arguable case that the chambers judge erred in principle. In this regard, I refer to the submissions concerning the equity of redemption, *Cliffs,* and the failure to compare the competing offers. I find the appellant has established a reasonable possibility that a division of this Court would grant the appeal on its merits.

D. Will the appeal unduly hinder the action?

[52] As to whether an appeal would unduly hinder the progress of the action, I acknowledge and recognise the concerns of CMLS concerning its potential prejudice if the appeal is allowed to go forward. If the appeal is ultimately dismissed, CMLS will recover less money than at present. Its position will be further prejudiced if, for any reason, the Solterra offer is withdrawn. Balanced against this potential prejudice, there is, of course, the possibility that the appeal might succeed and, if the 129 offer is funded, CMLS will indeed end up in a better position than they are at present. The prejudice to CMLS has to be balanced against the prejudice to Aviva and the pre-purchasers. Aviva stands to lose $8.6 million if leave is denied, and the pre-purchasers will be denied the units they purchased.

[53] In my view, in the present circumstances, the appeal will not unduly hinder the action's progress. While under the terms of the Solterra Backup Offer, the closing of the sale is to take place September 30, 2021, the appeal itself is scheduled to be heard on September 21, 2021. Solterra and the Monitor can agree under the terms of the sale agreement to extend the date for closing. While there is no assurance they will do so, given that Solterra, in the course of the bidding process, significantly raised its offer, it seems highly unlikely that, less than two months later, it would now withdraw from the transaction.

[54] Given all of the above, I am satisfied that it is in the interests of justice to grant leave to appeal.

FIVE-JUSTICE DIVISION

[55] The chambers judge found that a crucial consideration was that 129 was seeking an extension of the stay of creditor's rights without any indication it would put forward a plan of arrangement or compromise upon which the Petitioners' creditors may vote. She accepted the argument of Centura that the circumstances were similar to those in *Cliffs.* She quoted Justice Tysoe's comment in *Cliffs* that:

> [38] … The *CCAA* was not intended, in my view, to accommodate a non-consensual stay of creditors' rights while a debtor company attempts to carry out a restructuring plan that does not involve an arrangement or compromise upon which the creditors may vote.

[56] Whether those comments in *Cliffs* extend to and effectively prohibit the proposal of 129 is a matter of general import. While I appreciate the division hearing the appeal could conclude that *Cliffs* is distinguishable, it may hold otherwise, in which case it would be important that the division have the power, if they considered it appropriate, to reconsider *Cliffs*. Accordingly, in my view, a five-justice division is appropriate.

SUMMARY

[57] In summary, therefore, I would grant leave to appeal and direct the appeal be heard by a five-justice division. The appeal will proceed on September 21, 2021. The

chambers judge's order with respect to the Solterra Backup Order is stayed pending the hearing of the appeal. It will be up to the division hearing the appeal to determine whether the stay should or should not be continued. 129 will, by consent, post $10,000 for security for Solterra's costs of the appeal.

[58] **VOITH J.A.**: I agree.

[59] **MARCHAND J.A.**: I agree.

[Discussion with counsel re: timing of payment of the security]

[60] **GOEPEL J.A.**: The posting of security for costs in the sum of $10,000 will coincide with the date when the appellant's factum is due (September 1, 2021). A term of the order should include that if the security for costs is not posted, the appeal will be stayed and the stay of the sale will be lifted. By consent, security for costs will be held in counsel's the trust account.

[Further discussion with counsel re: filing schedule]

[61] **GOEPEL J.A.**: I would propose the appeal record and appeal book be filed separately. The filing of the certificate of readiness is dispensed with. The appellant will file its factum, appeal record, and appeal book by September 1, 2021. All of the respondents will file their factums, individual appeal books, and condensed books by September 13, 2021. If there is to be a reply filed, it will be filed by September 17, 2021. Any further evidence to be filed by the parties should be filed by their respective factum filing date.

"The Honourable Mr. Justice Goepel"