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)

AFFIDAVIT

I, Yiota Petrakis, Legal Administrative Assistant, of 2600 – 595 Burrard Street, Vancouver, British Columbia MAKE OATH AND SAY THAT:

1. I am a legal administrative assistant at Blake, Cassels & Graydon LLP, the solicitors for Ernst & Young Inc. in its capacity as the Court appointed Monitor (the "**Monitor**") of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (the "**Petitioners**") in this proceeding, and as such I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify in which case I believe that both the information from the informant and the resulting statement are true.

2. Attached to this my affidavit and marked as **Exhibit "A"** is a letter from Michael Bell of the Monitor dated September 10, 2021 and addressed to the Service List of the Petitioners.

3. Attached to this my affidavit and marked as **Exhibit "B"** is a letter from Peter Bychawski, counsel for the Monitor, to Jordan Schultz, counsel for Macario Reyes and 1296371 B.C. Ltd., dated September 13, 2021.

4. Attached to this my affidavit and marked as **Exhibit "C"** is an Amendment to Purchase and Sale Agreement (Terrace House, Vancouver, B.C.) between Port Capital Development (EV) Inc., Evergreen House Development Limited Partnership, and Solterra Acquisitions Corp. dated August 1, 2021.

AFFIRMED BEFORE ME at Vancouver, British Columbia, this 13th day of September, 2021	)	
	)	YPetrakis
A Commissioner for taking Affidavits in the Province of British Columbia	)	**Yiota Petrakis**

PETER BYCHAWSKI
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-4218

This is Exhibit **"A"** referred to in the affidavit of Yiota Petrakis affirmed before me at Vancouver, British Columbia this 13th day of September, 2021.

A Commissioner for taking Affidavits
for British Columbia

PETER BYCHAWSKI
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-4218

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

Building a better
working world

September 10, 2021

VIA EMAIL

To the CCAA Service List of:

Port Capital Development (EV) Inc., and
Evergreen House Development Limited Partnership
(Collectively, "**Terrace House**")

Dear Sirs or Madams:

RE: Extension of Property Insurance

Ernst & Young Inc., in its capacity as monitor (the "**Monitor**"), has since the commencement of these CCAA proceedings on May 29, 2020 sought continual extensions to the "**Property Insurance**" for the Terrace House development. The Monitor has faced some difficulty in obtaining past extensions to the Property Insurance, which is currently set to expire on September 30, 2021.

Due to the high likelihood that a transaction would not close until after the current expiry of the Property Insurance, the Monitor re-engaged Marsh Canada Limited ("**Marsh**"), the insurance broker for the project, to seek an extension beyond September 30, 2021.

Marsh has now informed the Monitor that the current insurer for the Property Insurance, HDI Global SE, will not provide a further extension beyond the current September 30, 2021 expiry. While the Monitor continues to engage with Marsh on this issue, there is a significant risk that the Terrace House development will not have Property Insurance coverage after September 30, 2021.

As the Monitor understands from Marsh, the difficulties faced with obtaining Property Insurance are due to both increased risks specific to the insolvency of the Terrace House development and increased scrutiny within the global insurance markets. The Monitor notes that:

- Marsh has been declined by every international insurer it has approached, other than the current insurer; and
- the Monitor previously engaged Aon Reed Stenhouse Inc ("**Aon**") to obtain alternative Property Insurance and Aon was unable to acquire Property Insurance for the Terrace House development.

As noted above, the Monitor will continue to work with Marsh to explore insurance alternatives and will provide an update should one become available.

Kind Regards,

ERNST & YOUNG INC.
in its capacity as Monitor
of Port Capital Development (EV) Inc. and
Evergreen House Development Limited Partnership
and not in its personal or corporate capacity

Per:

Michael Bell, CPA, CA, CIRP, LIT
Senior Vice President

This is Exhibit **"B"** referred to in the affidavit of Yiota Petrakis affirmed before me at Vancouver, British Columbia this 13th day of September, 2021.

A Commissioner for taking Affidavits
for British Columbia

PETER BYCHAWSKI
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-4218

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

Peter Bychawski
Partner
Dir: 604-631-4218
peter.bychawski@blakes.com

September 13, 2021

VIA E-MAIL

Reference: 00008431/001364

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

Attention: Jordan Schultz

RE: In the Matter of the Plan of Compromise and Arrangement of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership SCBC Vancouver Registry No. S-205095, Court of Appeal File No. CA-47585

Dear Sir:

As you are aware, the conditionality of your client's proposed financing (the "**129 Refinancing**") that is the subject of the hearing before the British Columbia Court of Appeal scheduled for September 21, 2021 has been an ongoing question for stakeholders.

While we understand that there are additional conditions to the 129 Refinancing, we write presently with respect to the two conditions noted below that, considering recent developments, warrant your client providing an update to stakeholders as soon as possible and, in any event, prior to the September 21 hearing.

Domain's Insurance Condition

Pursuant to the Amendment to Third Revised Commitment Letter dated September 1, 2021, it is a condition precedent to Domain's funding commitment that the existing insurance policies issued for the Terrace House project by Marsh Canada Limited ("**Marsh**") be extended to the term of Domain's loan (i.e., April 30, 2022) and that Domain be added as first loss payee under such policies (the "**Insurance Condition**").

As advised in the Monitor's letter to stakeholders dated September 10, 2021, Marsh has now informed the Monitor that the current insurer for the Terrace House project will not provide a further extension to the existing insurance policies beyond their current September 30, 2021 expiry date. While the Monitor continues to engage with Marsh on this issue, there is a significant risk that the Terrace House project will not have property insurance coverage after September 30, 2021.

Please advise of the status of the Insurance Condition and your client's ability to complete the 129 Refinancing in the circumstances.

Blakes

Additional Domain Financing Condition

The payment of CMLS and Desjardins by your client in full is a further condition to the 129 Refinancing.

The Monitor understands from Mr. Reyes' affidavit sworn on September 1, 2021, that your client's ability to pay CMLS and Desjardins out in full as contemplated by the 129 Refinancing is itself conditional upon the closing of a further loan commitment by Domain to your client in the principal amount of $1,675,000 that was expected to close on or about September 10, 2021 (the "**Additional Domain Financing**").

We understand that the Additional Domain Financing did not close by September 10 as anticipated.

Please provide an update on the status of the Additional Domain Financing and your client's ability to meet its commitments to CMLS and Desjardins under the 129 Refinancing in the circumstances.

In addition to the two conditions noted above, we would ask that you also provide stakeholders with a written update on whether any of the other outstanding conditions to the 129 Refinancing have now been satisfied.

Yours truly,

Peter Bychawski

c. The Service List

This is Exhibit **"C"** referred to in the affidavit of Yiota Petrakis affirmed before me at Vancouver, British Columbia this 13th day of September, 2021.

A Commissioner for taking Affidavits
for British Columbia

PETER BYCHAWSKI
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-4218

AMENDMENT TO PURCHASE AND SALE AGREEMENT (Terrace House, Vancouver, B.C.)

THIS AGREEMENT is dated and effective as of August 1, 2021.

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**")

WHEREAS:

A. By a purchase and sale agreement dated for reference June 4, 2021 between the Vendor and the Purchaser (as may be amended from time to time, collectively, the "**Purchase Agreement**") the Vendor agreed to sell and the Purchaser agreed to purchase certain Purchased Assets, including the lands and premises located in Vancouver, British Columbia and civically and legally described in the Purchase Agreement, on the terms and conditions set out in the Purchase Agreement;

B. As of the date hereof, there is an appeal from the Final Order and, as a result, the transactions contemplated by the Purchase Agreement may not be completed on or prior to September 30, 2021; and

C. The parties have agreed to amend the Purchase Agreement in accordance with this Agreement.

THEREFORE in consideration of the amount of $1.00 now paid by each party to the other and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. **Capitalized Terms**. Each capitalized term used in this Agreement will have the meaning given to it in the Purchase Agreement unless otherwise defined herein.

2. **Amendments**. The Vendor and the Purchaser agree that, effective as of the date of this Agreement, the Purchase Agreement is amended as follows:

   (a) by deleting the definition of "Approved Contracts" in Section 1.1(b) in its entirety and replacing it with:

   ""**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 August 13, 2021.";

   (b) by deleting the definition of "Condition Date" in Section 1.1(n) in its entirety and replacing it with: "Intentionally Deleted.";

   (c) by amending the definition of "Purchaser's Solicitors" in Section 1.1 (uu) by deleting "Synergy Business Lawyers, LLP" and replacing it with "Fasken Martineau DuMoulin LLP";

   (d) by deleting Section 8.2 in its entirety and replacing it with: "Intentionally Deleted.";

   (e) by deleting Section 11.6(a) in its entirety and replacing it with:

   "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:

   Fasken Martineau DuMoulin LLP
   550 Burrard Street, Suite 2900
   Vancouver, BC V6C 0A3

   Attention: Kibben Jackson and Laura Smith
   E-mail: kjackson@fasken.com; lasmith@fasken.com";

   (f) by deleting limb (iii) from the definition of "Closing Date" in Section 1.1(l) of the Purchase Agreement and replacing it with the following: "(iii) the date that is 10 Business Days after the final resolution of all applicable appeals in connection with the Final Order."; and

   (g) by deleting Section 9.11 in its entirety.

3. **Time of the Essence**. Time is of the essence of the Purchase Agreement, as amended by this Agreement.

4. **Interpretation**. This Agreement will, from the date of this Agreement, be read and construed together with the Purchase Agreement and be treated as part thereof, and the Purchase Agreement, as amended by this Agreement, will continue in full force and effect in accordance with the terms thereof and hereof.

5. **Conflict**. In case of any conflict between the provisions of the Purchase Agreement and the provisions of this Agreement, the provisions of this Agreement will prevail.

6. **Further Assurances**. Each party will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to carry out or better evidence or perfect the full intent and meaning of this Agreement.

7. **Binding Effect**. This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

8. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, taken together, will be deemed to constitute one and the same instrument.

9. **Delivery by Electronic Transmission**. Delivery of an executed copy of this Agreement by any party by electronic transmission will be as effective as personal delivery of an originally executed copy of this Agreement by such party.

[*signature page follows*]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

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, President
Title: Authorized Signatory