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
(Interim Financing and Stay Extension)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	13/MAY/2022

THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on the 13th day of May, 2022; 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 Eleventh Report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed; 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 May 11, 2022 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.

INTERIM FINANCING

2. All capitalized terms in this Order not otherwise defined herein have the meaning ascribed to them in the as defined in the Further Amended and Restated Initial order pronounced by the Court on February 14, 2022 (the "**FARIO**").

3. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Mandate Management Corporation and its group of lenders/investors (together the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that the principal amount of such borrowings under such credit facility shall not exceed $20,000,000.00 unless permitted by further Order of this Court.

4. 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 May 11, 2022 (the "**Commitment Letter**"), filed.

5. 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 its 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 or the FARIO.

6. 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 paragraph 10 (a) hereof and in paragraphs 37-40 of the FARIO as amended by paragraph 10(b) hereof.

7. 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 10 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.

8. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners 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.

AUTHORIZATION TO PAY OUT DOMAIN

9. The Petitioners are hereby authorized, empowered and directed to apply the first proceeds from drawings upon the Commitment Letter to repayment of amounts due to Domain in

respect of the New Loan Facility (as set out in the FARIO and as amended by Order of the Court pronounced on February 14, 2022) in the principal amount of $16,500,00.00 plus any accrued interest and fees payable to Domain thereunder.

VALIDITY AND PRIORITY OF CHARGES

10. Upon repayment in full of Domain pursuant to paragraph 9, above:

a. the priorities of the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

    i. First – Administration Charge (to the maximum amount of $100,000);

    ii. Second – Interim Lender's Charge; and

b. paragraphs 37-40 of the FARIO shall be replaced with the following:

37. 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.

38. 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.

39. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner 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 Petitioner obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge.

40. The Administration Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's Charge 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 Petitioner; 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 Petitioner 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 Petitioner 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.;

c. the Interim Lender shall be entitled to the same information and consultation as the New Lenders pursuant to paragraphs 25(c) and 28 of the FARIO; and

d. notwithstanding any provision to the contrary in the FARIO, the obligations of the Petitioners to 129 and Numberco shall be fully subordinated to those of the Petitioners to the Interim Lender and 129 and Numberco shall not be entitled to exercise any rights and remedies as against the Petitioners without the consent of the Interim Lender.

STAY EXTENSION

11. 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, April 16, 2021, June 11, 2021, and further extended by the Order of the Court of Appeal (Court of Appeal File No. CA-47585) pronounced as of September 22, 2021, and by Order of this Court pronounced April 29, 2022 is hereby continued and extended to and including September 30, 2022.

GENERAL

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
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

CHECKED

Schedule "A"

(List of Counsel)

Counsel name/litigant	**Party represented**
~~Scott Stephens~~	~~Domain Mortgage Corp.~~
William Roberts / W CLARK A/S.	Aviva Insurance Company of Canada
Peter Rubin	The Monitor
~~Jordan Shultz~~	~~Macario Reyes and 1296371 B.C. Ltd.~~
M BERMAN A. LEUNG	JING CHEN

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