FORM 66
(RULE 16-1(2))

S-225423

No. ____________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

DOMAIN MORTGAGE CORP.

Petitioner

and

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

Respondents

PETITION TO THE COURT

ON NOTICE TO: the respondents and the parties on the Service List in the CCAA proceeding commenced in BCSC, Vancouver Registry No. S-205095

This proceeding is brought for the relief set out in Part 1 below, by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

b) serve on the petitioner(s)

   i) 2 copies of the filed response to petition, and

   ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to the petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

a) if you were served with the petition anywhere in Canada, within 21 days after that service,

b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

c) if you were served with the petition anywhere else, within 49 days after that service, or

d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: Law Courts, 800 Smithe Street, Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: Owen Bird Law Corporation P.O. Box 49130 Three Bentall Centre 2900-595 Burrard Street Vancouver, BC V7X 1J5 (Attention: Scott H. Stephens) Fax number address for service (if any) of the petitioner: N/A E-mail address for service (if any) of the petitioner: N/A
(3)	The name and office address of the petitioner's lawyer is: Scott H. Stephens Owen Bird Law Corporation P.O. Box 49130 Three Bentall Centre 2900-595 Burrard Street Vancouver, BC V7X 1J5

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. A receivership order substantially in the form attached as Schedule "**A**" or in such other form as may be sought at the hearing of the petition.

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

Part 2: FACTUAL BASIS

1. Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (together, the "**Debtors**") own a high-rise luxury residential mixed-use strata development located at 1250 West Hastings Street in Vancouver, B.C. in the Coal Harbour neighbourhood (the "**Terrace House Project**").

2. This court granted an Initial Order under the *Companies' Creditors Arrangement Act* (the "**CCAA**") on May 29, 2020. Under the Initial Order, Ernst & Young Inc. (the "**Monitor**") was appointed Monitor and granted enhanced powers, including to consider restructuring opportunities and to administer a dual-track sale and investment solicitation process (the "**SISP**").

3. At the time the CCAA proceedings were commenced, the Debtors' senior secured creditor was CMLS Financial Ltd. ("**CMLS**"). CMLS had provided the construction loan for the Terrace House Project, but ceased making advances. Pursuant to a restated Initial Order made June 8, 2020, Desjardins Financial Security Life Assurance Company ("**Desjardins**") provided the Debtors with debtor-in-possession financing (the "**DIP Facility**").

4. The SISP resulted in three liquidation offers as well as an offer from 1296371 B.C. Ltd. ("**129**"), described as a "refinancing transaction." The 129 transaction, in short summary, contemplated monies being raised in sufficient amounts to repay the DIP Facility, effect a purchase and assignment of CMLS's loan and security, and provide the Debtors with working capital.

5. 129's offer was premised on the Debtors having "strong interest from lenders to provide new construction financing," but in order to secure such construction financing, the Debtors said, they required breathing room and control of the Terrace House Project. The Debtors' expectation was that, within a 6 month extension of the stay, they would be able to secure new construction financing and exit the CCAA proceeding.

6. By order made June 15, 2021, this court approved one of the liquidation offers and rejected 129's proposed transaction. By order made September 22, 2021, the Court of Appeal allowed an appeal of the June 15, 2021 order.

7. The Court of Appeal's order resulted in various amendments to the Initial Order, incorporated into a Further Amended and Restated Initial Order made in the CCAA proceeding on February 14, 2022, including:

a) removal of the Monitor's enhanced powers and reversion of operational control of the Terrace House Project back to the Debtors;

b) a direction that the Debtors obtain loans from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**126**") and 129 (126 and 129, together, the "**Junior Lenders**") in accordance with the terms of a commitment letter dated July 30, 2021 (the "**Domain Commitment Letter**") in order to finance:

i) repayment of amounts owed to Desjardins under the DIP Facility; and

ii) the purchase and assignment of the CMLS loans,

(the "**Loan Facility**");

c) various orders in respect of Domain, its role in this CCAA proceeding and its rights under the Domain Commitment Letter and the Security (as defined below), including:

i) no further step may be taken by the Debtors in the CCAA proceeding without Domain's consent while the Loan Facility remains outstanding;

ii) no order may be made granting any security or charge priority over the Security (as defined below) without Domain's consent;

iii) upon an occurrence of default under the Domain Commitment Letter or the Security (as defined below), on five business days' notice Domain may exercise its rights and remedies against the Debtors, including to apply to the court for the appointment of a receiver; and

iv) Domain is to be unaffected in any plan of arrangement or proposal that may be advanced by the Debtors.

8. The refinancing transaction completed in October 2021. As a result, the DIP Facility was repaid, CMLS received payment for amounts owed to it, and CMLS's security was assigned to Domain.

9. As part of the Loan Facility, Domain funded two loan segments as follows:

a) a first loan segment in the principal amount of $10.5 million, upon which interest currently accrues at the rate of 12% per annum, compounded monthly; and

b) a second loan segment in the principal amount of $4.2 million, upon which interest currently accrues at the rate of 24% per annum, compounded monthly.

10. The balance of the Loan Facility, in the principal sum of $10,549,060.03, was funded by the Junior Lenders. Promissory notes dated October 22, 2021 evidence the debts owed to the Junior Lenders (the "**Promissory Notes**").

11. Pursuant to a Loan Administration, Participation and Standstill Agreement dated October 2021, Domain administers the loans on behalf of the lenders. Domain is entitled to, among other things, take such actions and exercise such rights, powers, privileges and remedies under the Domain Commitment Letter, as amended, and the Security (as defined below), including on behalf of the Junior Lenders, that it considers necessary or advisable in its sole discretion.

12. The Debtors' obligations to Domain under the Domain Commitment Letter and the Promissory Notes are secured and supplemented by, among other things:

a) a mortgage and assignment of rents registered against the Terrace House Project under nos. CA7337616 and CA7337617, transferred under nos. CA9459739 and CA9459740, and modified under no. CA9459782 and further modified under CA9790630 (collectively, the "**Mortgage**");

b) a general security agreement dated November 1, 2018 and registered in the Personal Property Registry under Base Registration No. 303506L, pursuant to which the Debtors have granted Domain a security interest in all present and after acquired personal property arising from, pertaining to, located on, or used in connection with the Terrace House Project (the "**GSA**");

c) a guarantee dated November 1, 2018 signed by Macario Teodoro Reyes ("**Reyes**") and Port Capital Development Inc. (the "**Corporate Guarantor**") (Reyes and the Corporate Guarantor, together, the "**Guarantors**") pursuant to which those parties unconditionally and irrevocably guaranteed payment of all debts and liabilities, present or future, direct or indirect, absolute or contingent, owed by the Debtors to Domain;

d) a cost overrun and completion guarantee dated November 1, 2018 signed by the Debtors and the Guarantors;

e) an Environmental Warranty and Indemnity Agreement dated November 1, 2018 signed by the Debtors and the Guarantors;

f) an Assignment of Unit Sales and Agreements and Deposits dated November 1, 2018 signed by the Debtors and the Guarantors;

g) an Assignment of Material Contracts dated November 1, 2018 signed by the Debtors;

h) an Assignment of Insurance dated November 1, 2018 signed by the Debtors;

i) an Assignment of Term Deposits and Credit Balances dated November 1, 2018 signed by the Debtors; and

j) an Assignment of Construction Contract dated November 26, 2018 signed by the Debtors,

(collectively, the "**Security**").

13. Pursuant to the Court of Appeal's September 22, 2021 order, the Security charges the Debtors' Property (as defined in the CCAA orders) in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge and claims contemplated by s. 11.8(8) of the CCAA.

14. The Mortgage and the GSA include provisions entitling Domain to the appointment of a receiver, upon the occurrence of an event of default, over the Terrace House Project and the Debtors' personal property.

15. On February 14, 2022 this court granted an order authorizing and empowering the Debtors to enter into a further credit facility with Domain on the terms and conditions of a commitment letter dated February 7, 2022 (the "**February 2022 Commitment Letter**"). Pursuant to the February 2022 Commitment Letter Domain advanced a third loan segment in the principal sum of $1,800,000 (hereafter included within the defined term "Loan Facility"). Interest accrues on the third loan segment at the rate of 24% per annum, compounded monthly.

16. In the course of the CCAA proceeding, the Debtors identified Enso Holdings Ltd. ("**Enso**") as a potential development partner. It was contemplated that the Debtors and Enso would co-develop the Terrace House Project, with Enso becoming the majority general partner and providing its covenant and an equity investment to support the necessary construction financing to exit the CCAA proceedings. The Debtors and Enso negotiated a commitment letter dated April 19, 2022 with Mandate Management Corporation ("**Mandate**") for a proposed $20 million mortgage loan (the "**Proposed Mandate Loan**"). The Proposed Mandate Loan was intended to repay the first, second

and third loan segments funded by Domain under the Loan Facility and to provide the Debtors with working capital.

17. On or about May 12, 2022 the Monitor reported that the Proposed Mandate Loan was expected to close the week ended May 20, 2022 or soon thereafter. On the same day this court granted an order approving the Proposed Mandate Loan and extending the stay of proceedings under the CCAA to September 30, 2022.

18. The Monitor's Twelfth Report dated June 16, 2022 concluded that the failure of the Proposed Mandate Loan to close constituted a material adverse change in the Debtors' financial affairs. Now, a couple weeks later, the Proposed Mandate Loan has still not closed.

19. The Debtors have an immediate need for financing. Post-filing suppliers are not being paid. The Terrace House Project is subject to waste and in need of preservation and protection. The Debtors appear to have no reasonable prospect of implementing a plan for the reorganization of the Terrace House Project as contemplated by the orders granted in the CCAA proceeding.

20. The Loan Facility matured on July 1, 2022. The funds due thereunder have not been repaid. The Debtors are in default under the Domain Commitment Letter, the February 2022 Commitment Letter and the Security. Pursuant to the orders referred to above, Domain is entitled to exercise its rights and remedies against the Debtors, including for the appointment of a receiver, on five business days' notice.

21. As at July 4, 2022 the total sum due to Domain under the terms of the Domain Commitment Letter, the February 2022 Commitment Letter, the Promissory Notes and the Security is $29,239,192.03, exclusive of costs and expenses and interest accrued thereafter. Per diem interest accrues at the current rate of $15,808.32, before compounding. The highest and best offer obtained through the SISP for the purchase of the Terrace House Project would be insufficient to payout the indebtedness due and owing under the Loan Facility.

22. The Bowra Group Inc. ("**Bowra**") has consented to act as receiver and manager of the Debtors. Bowra has significant experience with assets of this nature. If appointed, it is expected that Bowra would undertake an expedited sales process.

Part 3: LEGAL BASIS

1. Domain makes separate but related applications to terminate the CCAA proceeding and appoint a receiver. Domain respectfully submits that, if the Proposed Mandate Loan does not fund, or an unconditional sale with a very short completion period does not materialize, then the CCAA proceeding serves no useful purpose and involves an additional layer of unnecessary costs.

The CCAA Proceeding

2. A primary purpose of the CCAA is to assist insolvent companies in developing and obtaining approval of compromises and arrangements with their creditors. By permitting insolvent companies an opportunity to avoid bankruptcy and a liquidation of assets, the hope is that jobs may be preserved and the social and economic costs associated with a liquidation of assets avoided.

Hong Kong Bank of Canada v. Chef Ready Foods Ltd., [1990] B.C.J. No. 2384 (C.A.)

3. If it becomes evident that a compromise or arrangement will not be forthcoming, or will not be approved, the debtor company's assets are typically liquidated. The Supreme Court of Canada commented on the various potential outcomes of CCAA proceedings in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 14:

> There are three ways of exiting *CCAA* proceedings. The best outcome is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the *CCAA* process terminates without reorganization being needed. The second most desirable outcome occurs when the debtor's compromise or arrangement is accepted by its creditors and the reorganized company emerges from the *CCAA* proceedings as a going concern. Lastly, <u>if the compromise or arrangement fails, either the company or its creditors usually seek to have the debtor's assets liquidated under the applicable provisions of the *BIA* or to place the debtor into receivership</u>.
>
> [emphasis added]

4. "Liquidating CCAAs" have become increasingly common. In appropriate circumstances, CCAA proceedings may be used to liquidate a debtor company's assets. However, in circumstances where the court is presented with competing options – a liquidation of assets in the context of a CCAA proceeding or through the enforcement of a creditor's security, such as a receivership – additional factors come into play. That is particularly so where, as here, the senior secured creditor is not subject to the court ordered stay and, by court order, is permitted to exercise its rights and remedies under its security on five business days' notice. This discussion will be returned to after a brief summary of the jurisdiction and general principles applicable to the appointment of a receiver.

Appointment of a Receiver

5. Pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), on the application of a secured creditor, the court may appoint a receiver. Similarly, pursuant to s. 39 of the *Law and Equity Act*, the court may appoint a receiver where it is just and convenient. Under Rule 10-2 the court may appoint a receiver in any proceeding either unconditionally or on terms.

6. Factors considered by the court in assessing whether it would be just and convenient to appoint a receiver include:

a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;

b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets;

c) the nature of the property;

d) the apprehended or actual waste of the debtor's assets;

e) the preservation and protection of the property;

f) the balance of convenience to the parties;

g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

k) the effect of the order upon the parties;

l) the conduct of the parties;

m) the length of time that a receiver may be in place;

n) the cost to the parties;

o) the likelihood of maximizing return to the parties; and

p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., BCSC 1527 at para 25

7. A creditor's right to appoint a receiver under its security is an important consideration. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, in circumstances where commercial parties have agreed to the appointment by contract, the remedy is not extraordinary and a number of policy considerations militate in favour of enforcement of the creditor's contractual right (e.g. certainty and security in transactions, freedom of contract, etc.).

Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477 at paras 50 and 75

Callidus Capital Corp. v. CarGap Inc., 2012 ONSC 163 at paras 43 and 44

Bank of Montreal v. Carnival National Leasing Limited, [2011] O.J. No. 671 (SCJ) at para 27

Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd., [1992] O.J. No. 330 (GD) at paras 2 – 6

Ward Western Holdings Corp. v. Brosseuk, 2021 BCSC 919 at para 55

CCAA or Receivership

8. The practical question is whether the Debtors' assets ought to be liquidated in the context of the CCAA proceeding or through a receivership. Domain respectfully submits a receivership is the appropriate forum. The fundamental objectives of the CCAA are no longer capable of being met. The CCAA proceeding also involves additional layers of unnecessary costs.

9. The Debtors' primary asset is the Terrace House Project. While single purpose land development companies may meet the criteria for creditor protection under the CCAA, when faced with competing options, courts often conclude it is appropriate to permit mortgagees to enforce their security in the conventional manner. The Court of Appeal discussed some of the relevant considerations in *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 at para 36:

> 36 Although the *CCAA* can apply to companies whose sole business is a single land development as long as the requirements set out in the *CCAA* are met, it may be that, in view of the nature of its business and financing arrangements, such companies would have difficulty proposing an arrangement or compromise that was more advantageous than the remedies available to its creditors. <u>The priorities of the security against the land development are often straightforward, and there may be little incentive for the creditors having senior priority to agree to an arrangement or compromise that involves money being paid to more junior creditors before the senior creditors are paid in full. If the developer is insolvent and not able to complete the development without further funding, the secured creditors may feel that they will be in a better position by exercising their remedies rather than by letting the developer remain in control of the failed development while attempting to rescue it by means of obtaining refinancing, capital injection by a new partner or DIP financing</u>.
>
> [emphasis added]

10. To similar effect are the comments made by the court in *Octagon Properties Group Ltd.*, [2009] A.J. No. 936 (QB) at para 17:

> This is not a case where it is appropriate to grant relief under the CCAA. First, I accept the position of the majority of first mortgagees who say that it is highly unlikely that any compromise or arrangement proposed by Octagon would be acceptable to them. <u>That position makes sense given the fact that if they are permitted to proceed with foreclosure procedures and taking into account the current estimates of value, for most mortgagees on most of their properties they will emerge reasonably unscathed. There is no incentive for them to agree to a compromise. On the other hand if I granted CCAA relief, it would be these same mortgagees who would be paying the cost to permit Octagon to buy some time. Second, there is no other reason for CCAA relief such as the existence of a large number of employees or significant unsecured debt in relation to the secured debt.</u> I balance those reasons against the fact that even if the first mortgagees commence or continue in their foreclosure proceedings that process is also supervised by the court and to the extent that Octagon has reasonable arguments to obtain relief under the foreclosure process, it will likely obtain that relief.
>
> [emphasis added]

11. A number of courts have made similar comments in reaching the same conclusion.

BCIMC Construction Fund Corp. v. Clover on Yonge Inc., 2020 ONSC 1953

Dondeb Inc., Re, 2012 ONSC 6087

Romspen Investment Corp. v. 6711162 Canada Inc., 2014 ONSC 2781

Marine Drive Properties Ltd., 2009 BCSC 1083

12. Of course, the underlying circumstances here go well beyond a mere competition between debtors wishing to enjoy the benefits of creditor protection under the CCAA and a secured creditor seeking to enforce its security. In addition to the factors discussed below, and apart from its contractual right to the appointment of a Receiver, the court expressly ordered that upon default and five business days' notice Domain could "exercise any and all of its rights and remedies against the [Debtors] or the Property...including...to apply to this Court of the appointment of a receiver...."

13. The parties' interests were balanced under the Court of Appeal's order and the Further Amended and Restated Initial Order. The Debtors were granted "breathing room" to secure a construction loan and exit the CCAA proceeding; however, as part of the *quid pro quo*, if an event of default were to occur, then that last gasp could be brought to a quick end by Domain. The Debtors have enjoyed considerably more time than they anticipated needing, including an extension of the maturity date under the Loan Facility.

There is, apparently, no imminent refinancing. There is also no reasonable prospect of a plan of arrangement.

14. Factors militating in favour of terminating the CCAA proceeding and instead liquidating the Debtors' assets through a receivership include:

a) The CCAA proceeding has been extant for more than two years. Leaving aside the question of whether it is appropriate for debtors to use the extraordinary remedy of the CCAA to buy time to continue attempts to raise new funding at the expense of their creditors (*Marine Drive Properties Ltd. (Re)*, 2009 BCSC 145 at para 38), the Proposed Mandate Loan has not funded and there is no reasonable prospect of the Debtors achieving a plan of arrangement. Also, the Debtors may continue their refinancing efforts during the course of a receivership – but they would do so while an officer of the court takes steps to protect the stakeholders' interests.

b) The Debtors have suffered a material adverse change in their financial affairs – they do not have access to funds and post-filing suppliers are going unpaid.

c) The development of the Terrace House Project ceased long ago. The asset is subject to waste and requires preservation and protection.

d) There is no operating business and no jobs to preserve.

e) The Debtors cannot take a step in the CCAA proceeding without Domain's consent.

f) The Loan Facility has matured. The indebtedness has not been repaid. An event of default has thus occurred. The Debtors also failed to provide a current appraisal report, contrary to a post-renewal condition, representing a separate default.

g) Domain is not subject to the court ordered stay of proceedings, has the contractual right to the appointment of a receiver and, by court order, Domain is entitled to exercise all of its rights and remedies on five business days' notice.

h) The outcome of the SISP represents the best available evidence regarding the value of the Terrace House Project. The secured debt exceeds the project's apparent value. There is no equity for the Debtors or any subordinate creditor.

i) Bowra has significant experience with assets of this nature. It has the experience and expertise to run an expedited sales process and maximize realizations.

j) The receivership order sought includes a stay provision and a receivership would continue to provide a single forum for resolution of matters pertaining to the Debtors.

15. For the foregoing reasons, it is appropriate in the circumstances to terminate the CCAA proceeding and appoint Bowra as receiver and manager of all of the undertakings, property and assets of the Debtors.

Priority of Receiver's Borrowings and Fees and Disbursements

16. There is usually no question that the court may grant a receiver's charge in priority to all creditors in circumstances where, as here, the receiver is sought to be appointed in order to preserve and realize assets for the benefit of interested parties, including secured creditors. However, in the present case, claims of builders liens are registered against title. Section 21 of the *Builders Lien Act* provides:

> 21 A claim of lien filed under this Act takes effect from the time work began or the time the first material was supplied for which the lien is claimed, and it has priority over all judgments, executions, attachments and receiving orders recovered, issued or made after that date.
>
> [emphasis added]

17. Subsections 32(1), (2), (5) and (6) of the *Builders Lien Act* state:

> 32(1) Subject to subsection (2), the amount secured in good faith by a registered mortgage as either a direct or contingent liability of the mortgagor has priority over the amount secured by a claim of lien.
>
> (2) Despite subsection (1), an advance by a mortgagee that results in an increase in the direct or contingent liability of a mortgagor, or both, under a registered mortgage occurring after the time a claim of lien is filed ranks in priority after the amount secured by that claim of lien.

...

(5) Despite subsections (1) and (2) or any other enactment, if one or more claims of lien are filed in a land title office in relation to an improvement, a mortgagee may apply to the court for an order that one or more further advances under the mortgage are to have priority over the claims of lien.

(6) On an application by a mortgagee under subsection (5), the court must make the order if it is satisfied that

(a) the advances will be applied to complete the improvement, and

(b) the advances will result in an increased value of the land and the improvement at least equal to the amount of the proposed advances.

18. In *Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4 a lien claimant successfully argued on appeal that the receiver's charge had wrongfully been granted priority over its lien. The Court of Appeal held that the Bank's loan to the receiver was not a "further advance" within s. 32(5) of the *Builders Lien Act* because it was a new loan and, therefore, subordinate in priority to the lien in accordance with s. 32(2).

19. *Peri Formwork* does not apply on the facts here. Domain is prepared to fund the receivership under the existing Mortgage. This would not be a "new loan". Further advances under the existing mortgage would fall squarely within s. 32(5).

20. Furthermore, and in any event, for reasons that are not made apparent on the face of the decision, the Court of Appeal in *Peri Formwork* did not consider ss. 31(1) or 243(6) of the BIA (the provisions were also not considered in *Yorkshire Trust Co. v. Canusa Construction Ltd.*, [1984] B.C.J. No. 1689 (C.A.), where the receiver was appointed under the *Law and Equity Act*). Those sections clothe the court with jurisdiction to order that receiver's borrowings be repaid in priority to creditors' claims and to grant a receiver's charge for fees and disbursements in priority to any or all secured creditors:

31(1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.

...

> 243(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

21. It is respectfully submitted that, to the extent either s. 21 or s. 32(5) and/or (6) of the *Builders Lien Act* purport to circumscribe the court's power to grant priority to receiver's borrowings and/or fees and disbursements, those sections directly conflict with the above provisions of the BIA and, thus, are rendered inoperative in accordance with the paramountcy doctrine. That was the conclusion reached in *Royal Bank of Canada v. Reid-Built Homes Ltd.*, 2018 ABQB 124 at para 134; rev'd in part 2019 ABCA 109 (the chambers judge refused to subordinate the City's claim for unpaid property taxes to the receiver's charge and was overturned on that issue on appeal – the Court of Appeal commented favourably on the chambers judge's analysis with respect to the relevant issue).

General

22. Domain will rely on Rules 1-3, 2-1, 10-2, 13-5, 14-1 and 16-1 and the law of contract, the *Law and Equity Act*, R.S.B.C. 1996, c. 253 including s. 39, the BIA including ss. 31(1), 243(1) and 243(6), the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 including s. 66, the *Builders Lien Act* including ss. 21 and 32, the CCAA including s. 11 and the inherent jurisdiction of the court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Lisa Ward made July 5, 2022.
2. Affidavit #1 of E. Halliday made July 5, 2022.
3. Eleventh Report of the Monitor dated May 12, 2022.
4. Twelfth Report of the Monitor dated June 16, 2022.
5. Initial Order made May 29, 2020.
6. Court of Appeal Order made September 22, 2021.
7. Further Amended and Restated Initial Order made February 14, 2022.

8. Order Increasing Domain Facility made February 14, 2022.

The petitioner estimates that the hearing of the petition will take ~~1~~ hour.

Date: July 5, 2022

Signature of lawyer for petitioner
Scott H. Stephens

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

Schedule "A"

No. ____________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

DOMAIN MORTGAGE CORP.

Petitioner

and

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

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE	)	
	)	~~DD~~13/~~MM~~JUL/~~YEAR~~2022
~~______~~JUSTICE	)	
~~__________~~FITZPATRICK	)	

ON THE APPLICATION of ~~[Plaintiff/Applicant]~~Domain Mortgage Corp. for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), ~~[and/or]~~ Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**"), and Rule 10-2 appointing ~~[RECEIVER'S NAME]~~ The Bowra Group Inc. as Receiver and Manager ~~[Receiver and/or Receiver and Manager]~~ (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (together, the "**Debtors**") ~~[DEBTOR'S NAME] (the "Debtor")~~ acquired for, or used in relation to a business carried on by the ~~Debtor~~Debtors, coming on for hearing this day at Vancouver, ~~________~~, British Columbia.

AND ON READING the Affidavit #1 of L. Ward, affidavit of E. Halliday, the consent of The Bowra Group Inc. #~~____~~ ~~of [NAME] sworn [DATE] and the consent of [RECEIVER'S NAME]~~ to act as the Receiver and the other materials filed herein and in the CCAA proceeding commenced in the Supreme Court of British Columbia, Vancouver Registry No. S-205095 (the "**CCAA Proceeding**");~~.~~ AND ON HEARING Scott H. Stephens ~~______________~~, Counsel for the petitioner ~~[NAME]~~ and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

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THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. The time for service of the petition, notice of hearing, affidavit #1 of L. Ward and affidavit #1 of E. Halliday is abridged such that the petition is properly returnable today and service upon any interested party other than those parties on the Service List in the CCAA Proceeding is hereby dispensed with.

~~1.~~2. Pursuant to Section 243(1) of the BIA, ~~**[and/or]**~~ Section 39 of the LEA and Rule 10-2, The Bowra Group Inc. ~~**[RECEIVER'S NAME]**~~ is appointed Receiver, without security, of all of the assets, undertakings and property of the ~~Debtor~~Debtors, including all proceeds (the "**Property**").

RECEIVER'S POWERS

~~2.~~3. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;

(b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;

(c) to manage, operate and carry on the business of the ~~Debtor~~Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the ~~Debtor~~Debtors;

(d) to engage 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, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the ~~Debtor~~Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Debtors and to exercise all remedies of the ~~Debtor~~Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the ~~Debtor~~Debtors;

(g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Debtors;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the ~~Debtor~~Debtors, for any purpose pursuant to this Order;

(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the ~~Debtor~~Debtors;

(j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the ~~Debtor~~Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of a single transaction for consideration up to \$10,000 ~~\$__________~~, provided that the aggregate consideration for all such transactions does not exceed \$100,000 ~~\$__________~~; and

(ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the ~~Debtor~~Debtors;

(q) to enter into agreements with any ~~trustee in bankruptcy~~Licensed Insolvency Trustee appointed in respect of the ~~Debtor~~Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the ~~Debtor~~Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the ~~Debtor~~Debtors may have; ~~and~~

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and

~~(s)~~(t) to receive further advances under the petitioner's mortgage for the purposes of carrying on the Receiver's duties pursuant hereto, which advances from the petitioner to the Receiver shall be secured by the petitioner's mortgage, in priority to all other advances made thereunder, and repayable to the petitioner in full priority to the claims of all other creditors, whether secured or unsecured, including persons who have registered or may register Claims of Builders Lien against the Property, pursuant to s. 32(5) of the *Builders Lien Act*, S.B.C. 1997, c. 45 and ss. 31(1) and 243(6) of the BIA, excepting only the Administration Charge (as defined in the orders made in the CCAA Proceeding) which shall continue to have the priority determined in the orders made in the CCAA Proceeding (the "**Administration Charge**"),

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and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the ~~Debtor~~Debtors, and without interference from any other Person.

~~3.~~4. Notwithstanding any provisions of and the issuance of this Receivership Order, the Receiver (whether in the name of the Receiver or in the name of and on behalf of the Debtors) and the Debtors shall be authorized and directed to take all steps and execute such documents as may be necessary or desirable to complete, comply with, assist in and satisfy the obligations of the Debtors in connection with the termination of the CCAA Proceeding and the order made therein concurrent with this order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

~~4.~~5. Each of (i) the ~~Debtor~~Debtors; (ii) all of the ~~Debtor~~Debtors's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including Ernst & Young Inc. (the "**Monitor**") in its capacity as the Monitor appointed by the court in the CCAA Proceeding (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and

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shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

~~5.~~6. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the ~~Debtor~~Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. -Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.

~~6.~~7. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in ~~paragraphs 4, 5 or 6 of~~ this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure. -Without limiting the foregoing, the Monitor shall provide to the Receiver or permit the Receiver to make, retain and take away copies of all Records in its possession, including all documents received and/or generated through the sale and investment solicitation process in the CCAA proceeding, including the contents of any data room, whether or not any such Records were or are considered confidential in nature and/or filed with the court pursuant to a sealing order.

~~7.~~8. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

~~8.~~9. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE ~~DEBTOR~~DEBTORS OR THE PROPERTY

~~9.~~10. No Proceeding against or in respect of the ~~Debtor~~Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the ~~Debtor~~Debtors or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the ~~Debtor~~Debtors and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

~~10.~~11. All rights and remedies (including, without limitation, set-off rights) against the ~~Debtor~~Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the ~~Debtor~~Debtors to carry on any business which the ~~Debtor~~Debtors is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

~~11.~~12. 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 ~~Debtor~~Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

~~12.~~13. All Persons having oral or written agreements with the ~~Debtor~~Debtors or statutory or regulatory mandates 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 ~~Debtor~~Debtors are 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 Receiver, and the Receiver shall be entitled to the continued use of the ~~Debtor~~Debtors'~~s~~ current 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 date of this Order are paid by the Receiver in accordance with normal payment practices of the ~~Debtor~~Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

~~13.~~14. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

~~14.~~15. Subject to the employees' right to terminate their employment, all employees of the ~~Debtor~~Debtors shall remain the employees of the ~~Debtor~~Debtors until such time as the Receiver, on the ~~Debtor~~Debtors'~~s~~ behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the ~~Debtor~~Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

PERSONAL INFORMATION

~~15.~~16. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

~~16.~~17. Nothing in this Order shall require the Receiver 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

~~17.~~18. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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 the Receiver is actually in possession.

~~18.~~19. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:

(a) before the Receiver's appointment; or,

(b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

~~19.~~20. Notwithstanding anything in federal or provincial law, but subject to paragraph 19~~7~~ of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

~~20.~~21. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:

(a) any gross negligence or wilful misconduct on its part; or

(b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

~~21.~~22. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a ~~first~~ charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, ~~but~~ excepting only the Administration Charge, and subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

~~22.~~23. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

24. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands:~~,~~

(a) against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court;~~.~~

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(b) in payment of any charges for taxes, utilities, or insurance premiums which relate to any of the Property; and

~~23.~~(c) in reduction and/or repayment of the amounts owing under the petitioner's mortgage.

FUNDING OF THE RECEIVERSHIP

~~24.~~25. The Receiver is authorized and empowered to borrow monies, standing in the place and stead of the Debtors, from the petitioner on the terms and conditions of its mortgage, ~~by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange,~~ for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. In addition to being secured by the petitioner's mortgage, the ~~The~~ whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies ~~borrowed~~advanced to the Receiver by the petitioner, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Administration Charge, the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

~~25.~~26. ~~Neither t~~The Receiver's Borrowings Charge ~~nor any other security granted by the Receiver in connection with its borrowings under this Order~~ shall not be enforced without leave of this Court.

~~26. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.~~

~~27. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.~~

ALLOCATION

~~28.~~27. To the extent not secured by and repaid in accordance with the terms of the petitioner's mortgage, ~~A~~any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

SERVICE AND NOTICE OF MATERIALS

~~29.~~28. The Receiver shall establish and maintain a website in respect of these proceedings at: https://www.bowragroup.com/engagements~~[**WEB ADDRESS**]~~ (the "**Website**") and shall post there as soon as practicable:

(a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,

(b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

~~30.~~29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the ~~Applicant~~ petitioner a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the ~~Applicant~~ petitioner need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the ~~Applicant~~ petitioner from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.

~~31.~~30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.

~~32.~~31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.

~~33.~~32. Notwithstanding paragraph 31 of this Order, service of the Petition ~~[OR the Notice of Application]~~ and any affidavits filed in support 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 its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.

~~34.~~33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the ~~Debtor~~Debtors's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

~~35.~~34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

~~36.~~35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

~~37.~~36. Nothing in this Order shall prevent the Receiver from acting as a ~~trustee in bankruptcy~~Licensed Insolvency Trustee of the ~~Debtor~~Debtors or either of them.

~~38.~~37. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

~~39.~~38. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver 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.

~~40.~~39. The petitioner ~~[Plaintiff/Applicant]~~ shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the ~~[Plaintiff/Applicant]~~petitioner's security or, if not so provided by the ~~[Plaintiff/Applicant]~~petitioner's security, then on an ~~substantial~~ indemnity basis to be paid by the Receiver from the ~~Debtor~~Debtors' ~~s~~ estate with such priority and at such time as this Court may determine.

~~41.~~40. Endorsement of this Order by counsel appearing on this application other than the ~~[Plaintiff/Applicant]~~petitioner is dispensed with.

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

APPROVED BY:

____

Signature of ~~[type of print name]~~Scott H. Stephens

lawyer for ~~[Plaintiff/Applicant]~~the petitioner, Domain Mortgage Corp.

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

Counsel/Person Appearing	Party Represented

~~RECEIVER CERTIFICATE~~

~~CERTIFICATE NO.~~ ____________________

~~AMOUNT~~ $ ____________________

1. ~~THIS IS TO CERTIFY that **[RECEIVER'S NAME]**, the **[Receiver and/or Receiver and Manager]** (the "**Receiver**") of all of the assets, undertakings and properties of [DEBTORDEBTORS'S NAME] acquired for, or used in relation to a business carried on by the DebtorDebtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the ____ day of ________, 201_ (the "**Order**") made in SCBC Action No. ________ and/or SCBC Action No. ________/Estate No. ________ has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $________, being part of the total principal sum of $________ which the Receiver is authorized to borrow under and pursuant to the Order.~~

2. ~~The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the ____ day of each month after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of ________ from time to time.~~

3. ~~Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property,~~

~~in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.~~

~~4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ________.~~

~~5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.~~

~~6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.~~

~~7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.~~

~~DATED the ____ day of __________, 201_.~~

~~**[RECEIVER'S NAME]**, solely in its capacity as Receiver of the Property, and not in its personal capacity~~

~~Per:~~ ____________________
~~Name:~~
~~Title:~~

Schedule "B"

Demand for Notice

TO: ~~**[Name of Applicant]**~~**Domain Mortgage Corp.**
c/o ~~**[Name of Counsel to the Applicant]**~~Owen Bird Law Corporation
Attention: Scott H. Stephens
Email: sstephens@owenbird.com

AND TO: ~~**[Name of Receiver]**~~**The Bowra Group Inc.**
c/o ~~**[Name of Counsel to the Receiver]**~~DLA Piper (Canada) LLP
Attention: Colin Brousson
Email: colin.brousson@dlapiper.com

Re: In the matter of the Receivership of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership~~[DEBTOR]~~

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

____

OR

2. By facsimile, at the following facsimile number (or numbers):

____

OR

3. By mail, at the following address:

____

Name of Creditor: ____________________________

Name of Counsel (if any): ____________________________

Creditor's Contact Address: ____________________________

____

____

Creditor's Contact Phone Number: ______________________________

Action No.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[PLAINTIFF/PETITIONER]
Plaintiff/Petitioner

- and -

[DEFENDANT/RESPONDENT]
Defendant/Respondent

AND:

Action No.
Estate No.

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF
[THE ~~DEBTOR~~DEBTORS]

B.C. MODEL RECEIVERSHIP ORDER VERSION NO. 3, __________, 2015

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