THIS IS THE 2nd AFFIDAVIT
OF AZADEH KHARAZMI IN THIS PROCEEDING
AND WAS MADE ON AUGUST 14, 2024

NO. H-230574
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ATRIUM MORTGAGE INVESTMENT CORPORATION

PETITIONER

AND:

MARVEL DEVELOPMENTS (LIONS GATE VILLAGE) LTD.
RAHIM FAKHARI
FERESHTEH AMIN

RESPONDENTS

**AFFIDAVIT**

I, Azadeh Kharazmi, of 2300 Bentall 5, 550 Burrard Street, Vancouver, British Columbia, Paralegal, SWEAR THAT:

1. I am employed by Gowling WLG (Canada) LLpP ("Gowling WLG"), the lawyers for the Petitioner, and I have personal knowledge of the facts and matters deposed to in this Affidavit, except where the same are stated to be on information and belief, in which case I believe them to be true.

2. This is a foreclosure proceeding.

3. The mortgage which is the subject of this proceeding (the "**Mortgage**") is a first financial charge registered against the lands and premises which are the subject of this proceeding (the "**Property**").

4. Order Nisi was made in this proceeding on September 14, 2023, with a redemption period of six months that expired on March 11, 2024.

5. An Order was made in this proceeding on March 14, 2024, granting the Petitioner exclusive conduct of sale of the Property.

6. Attached to this Affidavit and marked **Exhibit as "A"** is a true copy of an offer (the "**Offer**") from 1495746 B.C. Ltd. to purchase the Property for $50,188,000.

7. The Petitioner has accepted the Offer, subject to the approval of this Honourable Court.

| | |
|---|---|
| SWORN BEFORE ME at<br>Vancouver, British Columbia<br>on August 14, 2024<br><br>A Commissioner for taking Affidavits<br>for British Columbia | AZADEH KHARAZMI |

MANUEL DOMINGUEZ
GOWLING WLG (CANADA) LLP
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550 BURRARD STREET - SUITE 2300
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## OFFER TO PURCHASE

DATE: August 9, 2024.

This is Exhibit A referred to in the affidavit of Azadeh Kharazmi made before me on August 14, 202

A Commissioner for taking affidavits for British Columbia

BETWEEN:

**1495746 B.C. LTD.** (the "**Purchaser**")

AND:

**ATRIUM MORTGAGE INVESTMENT CORPORATION** ("**ATRIUM**"), pursuant to Supreme Court of British Columbia Action No. H-230574, an Order for Conduct of Sale made by Associate Judge Vos on March 14, 2024 (the "**Court Order**")

## 1. BASIC TERMS

The basic terms of this offer to purchase between the Purchaser and ATRIUM dated as of the date first above written (the "Offer to Purchase") are:

| | | | |
|---|---|---|---|
| (a) | **Address of Purchaser:** | Attention:<br>Telephone:<br>Email Address: | Saravan J. Veylan<br>604 608-4570<br>sveylan@mltaikins.com |
| (b) | **Address of ATRIUM (Solicitor):** | c/o Gowling WLG (Canada) LLP<br>Attention:<br>Telephone:<br>Email Address: | <br>Jonathan Ross and Murray Braaten<br>604-891-2778 and 604-801-7322<br>jonathan.ross@gowlingwlg.com, and murray.braaten@gowlingwlg.com |
| (c) | **Lands and Premises** | **Such right, title and interest in the following real properties as ATRIUM is empowered to market and sell pursuant to the Court Order:**<br><br>**Municipal Addresses:** See Schedule A<br><br>**Legal Description of the Lands:** See Schedule A<br><br>(the "**Lands**") and such right, title and interest in all buildings, structures and improvements thereon as ATRIUM is entitled to market and sell pursuant to the Court Order (collectively, the "**Premises**", and together with the Lands and the Leases, collectively, the "**Property**") | |
| (d) | **Leases** | Such right, title, and interest in all registered and unregistered leases in the Lands as ATRIUM is entitled to market and sell pursuant to the Court Order (the "**Leases**") | |
| (e) | **Purchase Price:** | Fifty Million One Hundred and Eighty-Eight Thousand Dollars ($50,188,000), being the total price offered by the | |

Purchaser to acquire the Property, subject to adjustment in accordance with section 11(b) and section 7(b), if applicable.

| | | |
|---|---|---|
| (f) | **Deposit** | Eight Million Dollars ($8,000,000) (the "**Deposit**") |
| (g) | **Deposit To Be Paid To:** | CBRE Limited "in trust" (the "**Deposit Holder**") |
| (h) | **Acceptance Date:** | August 9, 2024 at 5:00 p.m. |
| (i) | **Completion Date:** | Subject to section 10 and 13, thirty (30) days following the Vesting Order (as defined below) becoming a final order by satisfying the following conditions: (a) it is in full force and effect; (b) it has not been reversed, modified or vacated and is not subject to any stay; and (c) all applicable appeal periods have expired, and any appeals therefrom have been finally disposed of, leaving the Vesting Order wholly operable (for clarity, compliance with the above conditions shall result in a Completion Date not less than 60 days from the Vesting Order), or such later or earlier date as ATRIUM and the Purchaser may agree upon in writing and as the Vesting Order may allow (the "**Completion Date**") |

The foregoing basic terms are approved by the Purchaser and ATRIUM (collectively, the "**Parties**"). Any reference in this Offer to Purchase to a term shall be construed to include the provisions set forth above as well as any additional relevant and/or applicable terms and conditions of this Offer to Purchase.

## 2. OFFER

The Purchaser hereby offers to purchase the Property, free and clear of all encumbrances (specifically all encumbrances of the parties to the Court Order), save and except for subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies, and except as otherwise set out herein (the "**Permitted Encumbrances**"), for the Purchase Price and upon the terms and conditions herein set forth, subject expressly to a further order of the Supreme Court of British Columbia (the "**Court**") approving this Offer to Purchase (the "**Vesting Order**") and the vesting of title to the Property in the Purchaser upon the Completion Date.

## 3. SPECIAL PROVISIONS - ORDER FOR CONDUCT OF SALE

(a) The acceptance of this Offer to Purchase by ATRIUM is made pursuant to the Court Order and is neither made nor purported to be made as owner of the Property. The acceptance of this Offer to Purchase by ATRIUM is expressly subject to the approval by the Court and the granting of the Vesting Order, and all such other modifications, variations and orders of the Court, as may be applicable, and shall only become effective from and after the Vesting Order is made by the Court approving this Offer to Purchase.

(b) The Purchaser and ATRIUM acknowledge and agree that:

(i) ATRIUM shall, by not later than Wednesday August 14, 2024, prepare and file the application materials to seek a Vesting Order in respect of this Offer to Purchase and to use commercially reasonable efforts to have the matter heard as soon as the Rules of Court permit;

(ii) From the date of the acceptance of this Offer to Purchase, neither ATRIUM nor its listing agent CBRE Limited shall disclose any of the terms and conditions of this Offer to Purchase to any third party. ATRIUM shall instruct CBRE Limited to comply with the terms of this provision;

(iii) unless and until this Offer to Purchase is approved by the Court, the obligations of ATRIUM in connection with this Offer to Purchase are expressly limited to presenting this Offer to Purchase to the Court for approval in accordance with subparagraph (i) above;

(iv) at all times, ATRIUM is subject to the jurisdiction and discretion of the Court to entertain other offers and to abide by any further orders the Court may make regarding the Property and the Order for Conduct of Sale;

(v) ATRIUM may choose to advocate, or ATRIUM may be compelled to advocate that the Court consider other offers to obtain the highest price for the Property, and in this regard, ATRIUM gives no undertaking or commitment to the Purchaser to advocate or otherwise express support for the acceptance of this Offer to Purchase;

(vi) the Purchaser shall make its own arrangements to support this Offer to Purchase in Court;

(vii) this Offer to Purchase will become public information upon the filing of the application materials to seek a Vesting Order and ATRIUM is at liberty to provide the application materials, once filed, to any person;

(viii) it is the normal and accepted practice for the Court to direct all bidders (including the original bidder under an accepted Offer to Purchase) to each forthwith submit a final bid in a one round, judicial sealed-bid auction. The Purchaser agrees to this procedure, and/or any other procedure directed by the Court in connection with the proposed sale and purchase of the Property, without limitation in any way; and

(ix) Subject to any federal or provincial laws in respect of privacy, ATRIUM and its agents and insurers are permitted to disclose to third parties any personal and/or other information arising from or in any way connected with the Property, or the sale of the Property to the Buyer.

(c) If the Court vacates, sets aside or varies a Vesting Order approving this Offer to Purchase for any reason whatsoever, then in connection therewith, ATRIUM shall not be liable to the Purchaser (other than for the return of the Deposit if applicable in accordance with subsection 4(d)) or any other person in any way whatsoever.

(d) This Offer to Purchase shall be terminated if, at any time before the Court issues a Vesting Order:

(i) the mortgage which is the subject of the Order for Conduct of Sale (the "**ATRIUM Mortgage**") is purchased, redeemed, refinanced, or placed in good standing;

(ii) if ATRIUM determines in its sole and arbitrary discretion that it is inadvisable to present this Offer to Purchase to the Court or to withdraw such Offer to Purchase from the Court prior to any determination by the Court regarding its approval;

(iii) any order of the Court (or other court of competent jurisdiction) renders the completion impossible or inadvisable or ATRIUM is restrained or rejoined or otherwise prevented from completing the sale; or

(iv) unless ATRIUM otherwise agrees in its sole discretion, if the Vesting Order does not provide for application of the proceeds of sale of the Property as provided in subsection 3(f) below, and following such termination, ATRIUM shall have no further obligations or liability to the Purchaser under this Offer to Purchase.

(e) If, and only if the Vesting Order is made by the Court and is not vacated, set aside or materially varied, then the Purchaser shall be obligated to complete the purchase of the Property on the Completion Date (or such other date as the Vesting Order may stipulate), without regard to any appeal or application for leave to appeal, to vary or set aside the Vesting Order, by any person.

(f) The Vesting Order must direct payment of the proceeds of sale of the Property in priority as follows: (i) in payment of outstanding taxes, water and sewer rates, and interest and penalties thereon, owing with respect to the Property, (ii) in payment of real estate commission owing with respect of the sale plus GST thereon, (iii) the full and immediate payment to ATRIUM of all amounts due under the ATRIUM MORTGAGE (including all costs and expenses incurred by ATRIUM in the subject foreclosure proceedings and including legal costs on a solicitor and own client basis as provided for in the order nisi and Court Order in the foreclosure proceedings (the "**Loan Indebtedness**"); (iv) $30,000.00 to ATRIUM or ATRIUM's solicitors to be held as an Adjustment Reserve (as defined and further described in subsection 11(b)) and (v) the payment of any remaining sale proceeds to other title encumbrances (as their interests may appear) or into Court, pending resolution of any outstanding priority claims.

## 4. DEPOSIT

(a) Not later than one (1) business day following the acceptance by ATRIUM of this Offer to Purchase, the Purchaser shall pay the Deposit to the Deposit Holder by way of wire transfer, certified cheque, or bank draft in accordance with the wire instructions set forth in Part I of Schedule B attached hereto. The Deposit Holder shall hold and deal with the Deposit "in trust" in accordance with the terms hereof or in accordance with any order of the Court if applicable.

(b) The Deposit, when received by the Deposit Holder, shall be held by the Deposit Holder in an interest-bearing trust account until the Completion Date. The Deposit, together with any accrued interest thereon, shall be credited against the Purchase Price on the Completion Date or, in lieu of such credit for accrued interest, the Deposit Holder may pay an amount equal to such accrued interest directly to the Purchaser on the Completion Date or as soon as reasonably possible thereafter.

(c) In holding and dealing with the Deposit, the Deposit Holder is not bound in any way by any agreement other than this Offer to Purchase, if and as accepted by ATRIUM. The Deposit Holder shall not be considered to have assumed any duty, liability or responsibility other than to hold the Deposit in accordance with the provisions hereof and to pay the Deposit (or any accrued interest thereon) to either ATRIUM or the Purchaser in accordance with the terms hereof or any order of the Court. In the event of a dispute between the Parties as to the legal entitlement to the Deposit, the Deposit Holder may, in its discretion, pay the Deposit into Court, whereupon the Deposit Holder shall have no further obligations relating to the Deposit. The Deposit Holder shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Deposit Holder and the Deposit Holder is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Deposit Holder of any such notice or other document in good faith.

(d) The Deposit, while held "in trust" by the Deposit Holder, shall be dealt with as follows:

(i) in connection with the completion of this purchase and sale transaction, the Deposit, while held "in trust" by the Deposit Holder, shall be credited on account of the Purchase Price and paid to ATRIUM on the Completion Date, subject only to subsection 4(b) as it pertains to the payment of the interest accrued in respect of the Deposit;

(ii) if this Offer to Purchase is approved by the Court, and this purchase and sale transaction is not subsequently completed in accordance with the terms hereof due to the default of the Purchaser hereunder, the Deposit shall be forfeited by the Purchaser and paid by the Deposit Holder (without deduction of any commissions, brokerage fees or break fees) to ATRIUM without prejudice to ATRIUM's other rights and remedies against the Purchaser;

(iii) if this Offer to Purchase is approved by the Court and this purchase transaction is not subsequently completed in accordance with the terms hereof due to the default of ATRIUM hereunder, the Deposit shall be paid by the Deposit Holder to (without deduction of any commissions, brokerage fees or break fees) the Purchaser as the sole remedy, at law and in equity of the Purchaser against ATRIUM; and

(iv) if, after the granting of the Vesting Order, the Court vacates, sets aside or materially varies the Vesting Order on terms which are not satisfactory to the Purchaser acting reasonably, the Deposit shall be paid by the Deposit Holder (without deduction of any commissions, brokerage fees or break fees) to the Purchaser as the sole remedy at law and in equity of the Purchaser against ATRIUM.

(e) The provisions of this Section 4 shall survive the termination of this Offer to Purchase.

## 5. PURCHASE PRICE

The net Purchase Price for the Property, as adjusted pursuant to section 11 hereof and section 7(b), if applicable (the "**Balance**") shall be paid by the Purchaser to ATRIUM in accordance with the Vesting Order. The Vesting Order will include the Court's direction as to payment of the proceeds of sale of the Property as provided in subsection 3(f).

## 6. AS IS, WHERE IS

(a) The Purchaser acknowledges and agrees that the Purchaser:

(i) is purchasing the Property on a strictly "*as is, where is*" basis, as of the time of actual possession. Without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that ATRIUM has neither made, nor is required hereunder to make, any warranties or representations whatsoever with respect to the Property, whether expressed or implied, including, without limitation, any warranty or representation as to physical, environmental or financial condition, size, dimensions, fitness for use or purpose, quality, or the existence of any defect, whether latent or patent;

(ii) is taking the fixtures and any chattels on the Property as at the Completion Date and at its own risk and without any representations and/or warranty whatsoever, including as to ownership; and

(iii) has conducted all investigations and inspections with respect to the condition of the Property, including but not limited to, physical, environmental or financial issues that the Purchaser deems appropriate and/or relevant.

(b) The Purchaser acknowledges and agrees that the Property shall include the Lands, Premises and Leases only, and the Property shall not include any personal, incorporeal or other property.

(c) If ATRIUM has provided the Purchaser with any physical, environmental, financial or other reports or information regarding the Property (the "**Information**"), and for greater certainty ATRIUM is under no obligation to do so, the Purchaser acknowledges and agrees that ATRIUM has not made and the Purchaser shall not assert that ATRIUM made, any warranty or representation whatsoever regarding the Information, including the accuracy or completeness of the Information, and any use that the Purchaser or others may make of the Information is strictly at the Purchaser's own risk.

(d) No property condition disclosure statement concerning the Property forms part of or shall be deemed to form part of this Offer to Purchase.

## 7. REPRESENTATIONS AND WARRANTIES

(a) ATRIUM makes no warranties or representations of any kind whatsoever, expressed or implied, with respect to any part of the Property.

(b) The Purchaser hereby warrants and represents to ATRIUM that the Purchaser and agents of the Purchaser have made reasonable inquiry within the meaning of s. 116(5)(a) of the Income Tax Act and are satisfied that the registered owner(s) of the Property is, or if more than one are, not non-residents of Canada. The Purchaser agrees that, in connection with the completion of this purchase transaction in accordance with the terms hereof, the Purchaser shall pay to ATRIUM (in accordance with the Vesting Order and subject only to those adjustments to which ATRIUM has agreed in writing) the full Purchase Price owing on this purchase and sale transaction without holdback under s. 116(5) of the *Income Tax Act* or related sections. If at any time on or before the Completion Date the Purchaser has reason to believe the registered owner(s) of the Property reside outside Canada, then the Completion Date shall at the option of ATRIUM be extended for up to 60 days, allowing ATRIUM the opportunity to apply to Court for an Order Absolute (and thereby become the owner of the Property, and the seller of the Property for all purposes, including the purposes of Section 116(5) of the ITA; and the Purchaser shall then have no right to pay any of the purchase monies to the Receiver General).

**8. ENVIRONMENTAL**

(a) In this section 8, "**Environmental Liabilities**" means all losses of any kind suffered by or against any person, business or property, including or as a result of any order, investigation or action by any governmental authority, arising from or with respect to any one or more of the following:

(i) the release or presence of any hazardous material, contaminant, pollutant or other substance that creates a risk of harm or degradation, immediately or at some future time, to the environment or to human health;

(ii) liability under any applicable law in relation to the environment, including, without limitation, the *Environmental Management Act* (British Columbia) and the regulations thereto, for any costs incurred, whether for clean up, repair, assessment, prevention of damage, injury or destruction, or otherwise, by any government authority or any other person, or for damages from injury to or destruction of property; and

(iii) liability for personal injury or property damage arising in connection with any breach of any applicable environmental laws, including civil, criminal or quasicriminal laws, or under any statutory or common law tort or similar theory.

(b) The Purchaser waives any right to a site profile or any other report under the Environmental Management Act (British Columbia), and the regulations thereto.

(c) The Purchaser irrevocably releases, remises and forever discharges ATRIUM and ATRIUM's successors, assigns, directors, officers, employees and agents (collectively, the "**Releasees**") of and from any and all manner of actions, claims, causes of action, litigation, obligations or liabilities, whether at common law, equity or statutory, including, without limitation, the *Environmental Management Act* (British Columbia) and the regulations thereto, which the Purchaser has, could have or will have in the future, whether before or after the Purchaser takes title to or possession of the Property, which in any way arise out of or relate to any Environmental Liabilities in relation to the Property including, without limiting the generality of the foregoing, in relation to any environmental concerns (the "**Environmental Concerns**") which ATRIUM has disclosed to the Purchaser.

(d) The Purchaser irrevocably agrees to indemnify and save harmless each of the Releasees from and against any and all Environmental Liabilities, including in relation to the Environmental Concerns, that any Releasee may sustain or incur as a result of, in connection with or in any way related to the Property.

**9. GOODS AND SERVICES TAX**

(a) The Purchaser confirms that it shall be registered on the Completion Date with Canada Revenue Agency or any successor thereto ("**CRA**") in compliance with Part IX of the

*Excise Tax Act* (Canada) (the "**Act**") relating to the federal goods and services tax (the "**GST**").

(b) The Purchase Price does not include GST and the Purchaser covenants, represents and warrants and confirms that it (as of the date hereof and as of each Completion Date):

(i) shall be responsible for any GST and any other sales tax or similar tax payable with respect to the purchase of the Property payable with respect to the subject transaction and account directly to CRA with respect thereto;

(ii) is purchasing the Property as principal for its own account and the Property is not being purchased by the Purchaser as an agent, trustee or otherwise on behalf of or for another person;

(iii) shall be liable and shall self-assess and remit to the CRA or, other applicable government authority, all GST which is payable under the Act in connection with the purchase of the Property, all in accordance with the Act;

(iv) in the event that on the Completion Date the Purchaser is no longer validly registered as a registrant under Part IX of the Act for the purposes of goods and services tax such that ATRIUM is required to remit the GST payable with respect to the closing of the purchase and sale transaction contemplated herein, the Purchaser shall deliver to the ATRIUM with the Balance amount of such GST payable on the Purchase Price; and

(v) shall confirm its GST registration number to ATRIUM on or prior to the Completion Date by providing a signed certificate in a form approved by ATRIUM's solicitor's, acting reasonably.

(c) The Purchaser shall indemnify and save harmless ATRIUM from and against any and all GST, penalties, costs and/or interest which may become payable by or assessed against ATRIUM as a result of any failure by the Purchaser to comply with the foregoing and such indemnity shall survive and shall not merge upon the completion of the sale of the Property contemplated herein.

## 10. COMPLETION DATE

The purchase and sale of the Property shall be completed on the Completion Date, subject always to the terms of the Vesting Order and any further order of the Court.

## 11. ADJUSTMENTS AND ASSOCIATED TAXES

(a) Adjustments for the Property shall be made as of the Completion Date in accordance with this Section 11 subject to any additional terms and conditions of the Vesting Order or any further order of the Court, and the payment of the Balance due pursuant to Section 5 shall be adjusted accordingly. Except as otherwise provided in this Offer to Purchase, the Purchaser shall assume and pay all taxes, rates, local improvement assessments, fuel utilities and other charges from, and including the Completion Date, and only adjustments that are reasonably ascertainable by the Purchaser and ATRIUM, both incoming and outgoing of whatsoever nature, shall be made as of the Completion Date.

(b) A statement of adjustments (the "**Statement of Adjustments**") will be provided by the Purchaser to ATRIUM at least 3 business days prior to the Completion Date, for ATRIUM's review and approval at ATRIUM's discretion. ATRIUM makes no warranties or representations whatsoever, expressed or implied, with respect to the Statement of Adjustments. ATRIUM or ATRIUM's solicitors shall hold as an adjustment reserve in the amount of $30,000 to be applied to any post-closing adjustments (the "**Adjustment Reserve**"). ATRIUM shall have the right to re-adjust any of the adjustments set out in the Statement of Adjustments after the Completion Date provided (i) such re-adjustments do not exceed in the aggregate, $30,000 (the "**Adjustment Reserve**"), and (ii) any claim for re-adjustment is made within 180 days after the Completion Date (and ATRIUM shall have no liability for any claims for re-adjustment if the aggregate of all re-adjustment claims exceed the Adjustment Reserve, or for any claims for re-adjustment made after the expiry of such 180 day period). Any amount remaining in the Adjustment Reserve following the expiry of such 180-day period shall be paid by ATRIUM to the person(s) entitled thereto, or into Court, as directed by the Vesting Order.

(c) The Purchaser shall be responsible for the payment of all property transfer tax and GST payable in respect of the purchase and sale of Property and the registration of the Vesting Order.

**12. RISK**

The Property shall be and shall remain at the risk of the registered owner(s) of the Property until the Vesting Order is filed for registration in the New Westminster Land Title Office and title to the Property has been transferred to the Purchaser.

**13. POSSESSION**

(a) Possession shall occur and shall be governed by operation of and pursuant to the terms of the Vesting Order and any further order of the Court.

(b) Purchaser acknowledges that ATRIUM is not in possession of the Property and has no control over whether the registered owner(s) of the Property or any tenants in possession of the Property vacate the Property on the Completion Date (excluding tenants or subtenants under the Leases) (other than through the Vesting Order or any further order of the Court). The Purchaser hereby agrees to accept all existing lease obligations on the Completion Date.

(c) ATRIUM will not be responsible for removing any personal property left on or about the Property, by any occupant of the Property or otherwise.

**14. DELIVERY OF CLOSING DOCUMENTS**

(a) On or before the Completion Date, ATRIUM shall cause ATRIUM's solicitors to deliver to the Purchaser's solicitors the following items, duly executed by ATRIUM and in registrable form whenever appropriate, to be dealt with in accordance with section 15:

   (i) a Court-certified true copy of the Vesting Order, in registrable form (the "**Certified Vesting Order**"). The Vesting Order (and the Certified Vesting Order) shall describe the Purchaser exactly as the Purchaser appears on the first page of this Offer to Purchase, so the Purchaser (as described on the first page of this Offer to

Purchase, shall appear as the owner of the Property after completion of the purchase of the Property. ATRIUM shall not be bound by any term in this Offer to Purchase describing the Purchaser otherwise, or allowing the Purchaser to complete the Purchase with a different purchase-entity;

(ii) the Statement of Adjustments prepared by the Purchaser and delivered to Purchaser in accordance with Section 11;

(iii) such further certificates and assurances as may be required in the reasonable opinion of the Purchaser's solicitors and ATRIUM's solicitors to transfer to and vest in the Purchaser, title to the Property free and clear of any lien, charge, encumbrance or legal notation other than the Permitted Encumbrances; and

(iv) all leases, plans, surveys, reports and permits in the possession or control of ATRIUM.

(b) ATRIUM shall arrange to obtain the Certified Vesting Order from the Registrar of the Court prior to the Completion Date.

(c) ATRIUM and the Purchaser shall each deliver to or cause to be delivered to the other all such further documents and assurances as may be reasonably required to give full effect to the intent and meaning hereof.

(d) As soon as reasonably possible after the completion of the purchase and sale of the Property and subject to Section 13, ATRIUM shall deliver to the Purchaser all keys and like devices for the Building including, without limitation, master keys to all rentable space located within the Building, but only to the extent that such items have not previously been delivered to the Purchaser and are in ATRIUM's possession or control.

## 15. CLOSING PROCEDURE

(a) All documents pursuant to subsections 14(a) and 14(c) shall be delivered in escrow at the Purchaser's solicitors on or before 10:00 a.m. Vancouver time on the Completion Date.

(b) On or before 10:00 a.m. Vancouver time on the Completion Date, the Purchaser shall pay to the Purchaser's solicitors "in trust" the Balance, not secured by a new mortgage, as set out in Section 5 of this Offer to Purchase.

(c) Forthwith following receipt by the Purchaser's solicitors of the payment pursuant to subsection 15(b) and the documents and items referred to in subsections 14(a) and 14(c), the Purchaser shall cause the Purchaser's solicitors to file the Certified Vesting Order in the New Westminster Land Title Office on the Completion Date in accordance with written undertakings settled as between the Purchaser's Solicitors and ATRIUM's solicitors.

(d) If the Purchaser is relying upon a new mortgage to finance the Purchase Price, the Purchaser, while still required to pay the Balance on the Completion Date, may wait to pay the Balance to ATRIUM until after the Certified Vesting Order and the new mortgage documents have been lodged for registration in the New Westminster Land Title Office, but only if before such lodging, the Purchaser has:

(i) Deposited with the Purchaser's solicitor the Balance not secured by the new mortgage;

(ii) fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration; and

(iii) made available to the solicitors for ATRIUM a written undertaking by the solicitors for the Purchaser to pay the Balance not secured by the new mortgage upon the lodging of the Certified Vesting Order and the new mortgage documents and the advance by the mortgagee of the anticipated net mortgage proceeds.

(e) Forthwith following the submission for registration of the Certified Vesting Order referred to in subsection 15(c) and, if applicable, the new mortgage documents referred to in subsection 15(d), and upon the Purchaser's solicitors being satisfied as to the Purchaser's pending titles to the Lands after conducting a post filing registration check of the property index disclosing only the following:

(i) the existing title numbers to the Lands;

(ii) the Permitted Encumbrances;

(iii) pending numbers assigned respectively to the Certified Vesting Order and, if applicable, the new mortgage documents; and

(iv) any encumbrances with respect to which the solicitors for ATRIUM and Purchaser have agreed to alternative arrangements regarding the discharge and release of the same.

The Purchaser shall:

(v) pay the Balance or cause the Balance to be paid to ATRIUM's solicitors "in trust" for ATRIUM by wire transfer of immediately available funds in accordance with the wire instructions set out in Part II of Schedule B, attached hereto, or as otherwise directed by the Vesting Order prior to the Completion Date; and

(vi) provide written confirmation addressed to ATRIUM's solicitors and to the Deposit Holder that, as contemplated in subsection 4(b), the Deposit can be released to ATRIUM or to ATRIUM's solicitors "in trust", or as otherwise directed by the Vesting Order, and the amount equal to the accrued interest earned on the Deposit can be paid directly to the Purchaser on the Completion Date or as soon as reasonably possible thereafter.

(f) If there are any existing registered financial charges to be paid under the terms of the Vesting Order, ATRIUM may wait to pay such existing financial charges immediately after receipt of the Balance, but in this event, the Purchaser may pay the Balance to ATRIUM's solicitor in trust on undertakings to pay those financial charges in accordance with the Vesting Order.

(g) The Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings (the "**CBA Standard Undertakings**") are of no application whatsoever, to this Offer to Purchase.

16. **COMMISSIONS**

The Parties hereby acknowledge that CBRE Limited (for the purposes of this section 16, the "**Agent**") represented by Carter Kerzner, Jim Szabo PREC, Tony Quattrin PREC (for the purposes of Section 16, the "**Listing Licensees**") have a designated agency agreement to represent ATRIUM as a client in respect of the transactions contemplated herein. Subject to any further order of the Court, any real estate commissions payable to the Agent shall be added to the "**Loan Indebtedness**" secured by the ATRIUM Mortgage and paid in accordance with the terms of the Vesting Order, payable from the proceeds of the sale, and shall be payable to the Agent if this Offer to Purchase is approved by the Court and the purchase and sale contemplated herein is completed pursuant to the Vesting Order, the terms herein and any further order by the Court.

17. **FEES AND EXPENSES**

All documents that are necessary to complete the purchase and sale of the Property, with the exception of the Certified Vesting Order, which shall be prepared by ATRIUM, shall be prepared by the Purchaser, at the expense of the Purchaser. The Purchaser shall also pay the expense of registering the Certified Vesting Order, any new mortgage documents and any property transfer tax and GST due in respect of the transfer of the Property to the Purchaser.

18. **TENDER**

Any tender of documents or money pursuant to this Offer to Purchase may be made upon the solicitor acting for the party on whom tender is desired. Tender or payment of monies by the Purchaser to ATRIUM, and all deposits paid by the Purchaser, will be by wire transfer, certified cheque or bank draft only, and except for any funds to be secured by a new mortgage, shall be drawn from the trust account of the Purchaser's solicitor, MLT Aikins LLP.

19. **ASSIGNMENT**

The Purchaser may assign this Offer to Purchase to a related company with the consent of ATRIUM, which consent shall not be unreasonably withheld.

20. **SHARE PURCHASE OPTION**

Provided that the Vesting Order has been granted, ATRIUM and the Purchaser agree to make reasonable commercial efforts to negotiate and enter an amended Offer to Purchase (the "**Amended Offer to Purchase**") that is structured as a sale or issuance of shares of the registered owner of the Property and is subject to, and to be implemented by, a reverse vesting order of the Court (an "**RVO**"). ATRIUM and the Purchaser agree that:

(a) the appointment of a receiver over the Lands and/or the registered owner of the Lands may be required in order to apply for and obtain an RVO and in order to close the transaction to be contemplated by the Amended Offer to Purchase;

(b) the negotiation and entering into the Amended Offer to Purchase the appointment of a receiver, and the granting of the RVO may require the cooperation of the shareholder(s) of the registered owner of the Lands;

(c) the granting of an RVO is at the discretion of the Court;

(d) the Purchaser shall be responsible for its own legal fees and the legal fees of ATRIUM in regard to the negotiation of the Amended Offer to Purchase and the application for an RVO;

(e) the Purchaser shall be responsible for the payment of the fees and expenses of any receiver appointed in connection with the Amended Offer to Purchase and the application for an RVO;

(f) the transaction under the Amended Offer to Purchase shall close no later than forty-five (45) days after the Completion Date under this Offer to Purchase. In addition to the Purchase Price, the Purchaser shall be responsible for and shall pay to ATRIUM upon completion any and all interest accruing in respect of the Purchase Price from the Completion Date under this Offer to Purchase to the completion of the transaction under the Amended Offer to Purchase at the rate of 9% per annum; any savings on Property Transfer Tax made available by converting the transaction to a share or issuance of sales from an asset sale will be for the sole benefit of the Purchaser; and

(g) for clarity and notwithstanding the foregoing portions of this section 20, upon the granting of the Vesting Order, this Offer to Purchase will be binding on ATRIUM and the Purchaser unless or until it is replaced by a binding Amended Offer to Purchase that has been approved by an RVO granted by the Court.

**21. ENTIRE AGREEMENT**

This Offer to Purchase (including the Schedules attached hereto) constitutes the entire agreement between the Parties in respect of the Property, and it is understood and agreed that:

(a) there are no representations, warranties or guarantees or promises affecting the Property or this Offer to Purchase; and

(b) there are no covenants, agreements, collateral agreements or conditions affecting the Property or this Offer to Purchase,

in each case, other than as expressed in writing in this Offer to Purchase.

**22. TIME**

Time will be of the essence hereof, and unless the balance of the Purchase Price is paid on or before the Completion Date, ATRIUM may at ATRIUM's option, either terminate or reaffirm this Offer to Purchase, and the Deposit will be non-refundable and absolutely forfeited to ATRIUM, without prejudice to ATRIUM's other rights and remedies. These terms and conditions are for the sole benefit of ATRIUM

**23. NOTICE**

Any notices, requests or demands which may or are required to be given or made hereunder shall be in writing and served personally or e-mailed as follows:

(a) if to the Purchaser, to the address or e-mail address and to the person set out in subsection 1(a); and

(b) and if to ATRIUM, to the address or e-mail address and to the person set out in subsection 1(b);

provided that either Party may change its address or e-mail address by written notice to the other and in such event this section shall be deemed to be amended accordingly. Any notice, request or demand given or made hereunder by personal delivery or e-mail shall be conclusively deemed to have been given or made on the day it is actually delivered or e-mailed unless it is delivered or emailed after 5:00 p.m. (Vancouver time) or on a day other than a business day, in which case it shall be deemed to have been given or made on the next business day.

## 24. ELECTRONIC TRANSFER OF FUNDS

Notwithstanding any other provision of this Offer to Purchase, the Parties agree that, if the Purchaser is required by applicable legislation to cause the Balance to be paid by electronic transfer, then the Purchaser shall make all commercially reasonable efforts to ensure that the Balance is and shall be transferred to and received by ATRIUM's solicitors, or as otherwise directed by the Vesting Order, on or before 3:00 p.m. (Vancouver time) on the Completion Date. If for any reason out of the control of the Purchaser (which, for greater certainty, shall not include any event which is a default by the Purchaser under this Offer to Purchase), the Purchaser cannot ensure that such an amount shall be received by ATRIUM's solicitors, or as otherwise directed by the Vesting Order, on or before the time and date set out above, then the Purchaser shall be entitled to pay such amount on or before 3:00 p.m. (Vancouver time) on the next business day following the Completion Date so long as, in addition to such amount, the Purchaser also pays at the same time interest on such amount, at a rate equal to the Prime Rate plus one percent (1%) per annum, for each day from and including the Completion Date to but not including the day such payment is made "**Prime Rate**", as used herein, means that variable annual rate of interest quoted by the main branch of Royal Bank of Canada, Victoria, British Columbia, from time to time as the rate of interest used by it as a reference rate for setting rates of interest on Canadian dollar loans in Canada repayable on demand and commonly referred to by such bank as its "prime rate".

## 25. GOVERNING LAW AND PRACTICE DIRECTION

This Offer to Purchase and the agreement resulting therefrom shall be construed according to and governed by the laws of the Province of British Columbia. This Offer to Purchase and the process for seeking the Vesting Order shall be conducted in accordance with the Court's Practice Direction Number PD-62.

## 26. BINDING EFFECT

This Offer to Purchase shall enure to the benefit of and be binding upon ATRIUM and the Purchaser and their representative administrators, successors and permitted assigns.

## 27. BUSINESS DAY

(a) In this Offer to Purchase, "**business day**" means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

(b) If the date for the performance of any act or thing falls on a day which is a Saturday, Sunday or statutory holiday in British Columbia, then the date for the performance of such act or thing shall be extended to the next business day.

**28. EXECUTION BY ELECTRONIC MEANS**

This Offer to Purchase may be executed by the Parties and transmitted by electronic means and if so executed and transmitted this Offer to Purchase shall be for all purposes as effective as if the Parties had delivered an executed original Offer to Purchase.

**29. EXECUTION IN COUNTERPARTS**

This Offer to Purchase may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**30. OFFER**

This Offer to Purchase is irrevocable and open for acceptance by ATRIUM, in the manner indicated below, until but not after 5:00 p.m. Vancouver local time on the Acceptance Date, and if not accepted on or before such time and date shall be absolutely null and void. This Offer to Purchase may be accepted by ATRIUM executing this Offer to Purchase and returning same to the Purchaser, and when accepted, this Offer to Purchase shall constitute a binding agreement of Purchase and purchase of the Property in accordance with the terms hereof.

The Purchaser has executed this Offer to Purchase this 9th day of August, 2024.

**1495746 B.C. LTD.**
Per:

______________________________
(Authorized Signatory)

## ATRIUM'S ACCEPTANCE

In consideration of the Purchaser paying the Deposit to the Deposit Holder as provided in subsection 4(a), and in further consideration of the covenants and agreements of the Purchaser contained in this Offer to Purchase, ATRIUM hereby accepts the Purchaser's offer herein, subject to the terms and conditions hereof, including without limitation, the requirement to seek the approval by the Court of this Offer to Purchase.

**IN WITNESS WHEREOF** ATRIUM has executed this Offer to Purchase this 9th day of August, 2024.

**ATRIUM MORTGAGE INVESTMENT CORPORATION**

Per: R. Goodall

(Authorized Signatory)

**ROBERT GOODALL**

(Name and Title)

## SCHEDULE A

| PID | Legal Description | Municipal Address |
|---|---|---|
| 004-811-054 | LOT 1, BLOCK 15, PLAN VAP14885, DISTRICT LOT 764, GROUP 1, NEW WESTMINSTER LAND DISTRICT, OF LOT 1 | 2050 Marine Drive, North Vancouver B.C. |
| 009-283-862 | LOT 2, BLOCK 15, PLAN VAP10846, DISTRICT LOT 764, GROUP 1, NEW WESTMINSTER LAND DISTRICT | 2060 Marine Drive, North Vancouver B.C. |
| 005-260-817 | LOT 3, BLOCK 15, PLAN VAP10846, DISTRICT LOT 764, GROUP 1, NEW WESTMINSTER LAND DISTRICT | 2000 Curling Road, North Vancouver B.C. |
| 005-260-809 | LOT 1, BLOCK 15, PLAN VAP10846, DISTRICT LOT 764, GROUP 1, NEW WESTMINSTER LAND DISTRICT | |

## SCHEDULE B

WIRING INSTRUCTIONS

PART I – WIRING INSTRUCTIONS

PART II - WIRING INSTRUCTIONS OF ATRIUM'S SOLICITOR

CBRE

CBRE Limited, Real Estate Brokerage
1021 West Hastings Street, Suite 2500
Vancouver, BC V6E 0C3

# INCOMING WIRE INFORMATION
# VANCOUVER - *STATUTORY TRUST*
***(DEPOSIT)***

| | |
|---|---|
| Ordering Customer: | |
| Amount: | |
| Currency: | Canadian |
| Expectancy Date: | |

**WIRE TO BE PAID INTO:**

| | |
|---|---|
| Financial Institution Code: | 002 |
| Transit: | 03020 |
| Beneficial Bank Access: | The Bank of Nova Scotia |
| | 44 King Street West |
| | Toronto, Ontario |
| | M5H 1H1 |
| Swift: | NOSCCATT |
| Beneficial Account Name: | CBRE LIMITED |
| Beneficial Account Address: | 25th Floor, 1021 West Hastings Street |
| | Vancouver, BC V6E OC3 |
| Beneficial Account Number: | 030201513818 *(12 digits, no spaces)* |

| | |
|---|---|
| REFERENCE NUMBER: | |
| DEAL ADDRESS: | |
| Branch Administrator: | |

**TD Commercial Banking**

**Commercial National Accounts**
**66 Wellington Street West, 12th Floor**
**Toronto, ON M5K 1A2**
**P: 416 308 7068**
**F: 416 982 6076**

To Whom It May Concern

<u>RE: Wire Payment Instructions</u>

**Beneficiary Company:**
Name:
Gowling WLG (Canada) LLP
Address:
2300-550, Burrard Street, Vancouver BC V6C 2B5

**Beneficiary Bank:**
TD Canada Trust
700 West Georgia Street,
Vancouver, BC V7Y 1A2
Institution Bank Code: 004
Transit: 94000
Beneficiary Bank Clearing Code / Routing Number: CC000494000

Account Number: 5321915

SWIFT CODE: TDOMCATTTOR

***************************************************************************

NO. H-230574
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ATRIUM MORTGAGE INVESTMENT CORPORATION

PETITIONER

AND:

MARVEL DEVELOPMENTS (LIONS GATE VILLAGE) LTD.
RAHIM FAKHARI
FERESHTEH AMIN

RESPONDENTS

# AFFIDAVIT

GOWLING WLG

**GOWLING WLG (CANADA) LLP**
Lawyers
P.O. Box 30
2300 - 550 Burrard Street
Vancouver, B.C. V6C 2B5
604-891-2778
**Attention: Jonathan Ross**

jbr/azk
file number V57637