

No: S150042
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*
R.S.C. 1985 c. B-3

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MARINE
DRIVE PROPERTIES LTD., WYNDANSEA DEVELOPMENT CORPORATION AND
WYNDANSEA HOTEL INC.**

SECOND REPORT OF THE MONITOR

ERNST & YOUNG INC.,

JANUARY 28, 2015

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LIST OF EXHIBITS

- Exhibit "A" - Tearsheets from the Times Colonist and Vancouver Sun
- Exhibit "B" - CCAA Creditor Mailing Notice dated January 7, 2015
- Exhibit "C" - Mr. Carvello Letter dated January 23, 2015
- Exhibit "D" - Proof of Claim of District of Ucluelet dated January 22, 2015

**SECOND REPORT TO THE COURT
OF ERNST & YOUNG INC.,
MONITOR IN THE CCAA PROCEEDINGS OF
MARINE DRIVE PROPERTIES LTD., WYNDANSEA DEVELOPMENT CORPORATION AND
WYNDANSEA HOTEL INC.**

Effective as at January 28, 2015

INTRODUCTION AND PURPOSE OF THIS REPORT

1. On December 17, 2014, Marine Drive Properties Ltd. (“**MDP**”), Wyndansea Development Corporation (“**WDC**”) and Wyndansea Hotel Inc. (“**WHI**”) (collectively, the “**Marine Drive Entities**” or the “**Petitioners**”) filed assignments into bankruptcy (the “**Bankruptcy Proceedings**”) and Ernst & Young Inc. (“**EYI**”) consented to act and was appointed as trustee of each of the estates (the “**Trustee**”).
2. The first meetings of creditors (the “**First Meetings**”) for the Marine Drive Entities occurred on December 29, 2014, at which point: (a) the appointment of the Trustee was affirmed; and (a) inspectors in respect of each of the estates of the Marine Drive Entities were appointed.
3. At an inspectors’ meeting held by teleconference on December 30, 2014, the inspectors of each of the estates of the Marine Drive Entities authorized the Trustee to bring motions before this Honourable Court to:
 - i) seek the administrative and substantive consolidation of the bankruptcy estates of the Marine Drive Entities, and bankruptcy proceedings; and
 - ii) commence proceedings under the *Companies’ Creditors Arrangement Act (Canada)* (“**CCAA**”) to seek an initial order (the “**CCAA Order**”) to facilitate a restructuring of the Marine Drive Entities on a substantively consolidated basis pursuant to a Plan of Compromise and Arrangement (the “**Plan**”)

sponsored by 1019074 B.C. Ltd. (“**BC Co**”), an affiliate of the Onni Group of Companies (the “**Onni Group**”) (collectively the “**Sponsor**”).

4. On January 6, 2015, this Honourable Court granted orders approving the consolidation of each of the Marine Drive Entities into one consolidated estate (the “**Consolidation Order**”) in order to: a) minimize the costs associated with the statutory and administrative duties respecting these insolvency proceedings, and b) facilitate the filing of a consolidated BIA Proposal which is a condition to the CCAA Plan (defined below).

Report of the Proposed Monitor

5. On January 5, 2015, EYI, as the proposed Monitor in these CCAA proceedings, filed its first report (the “**First Report**”), the purpose of which was to advise this Honourable Court with respect to the following: (a) the proposed appointment of the Monitor; (b) the background to the insolvency proceedings; (c) a general overview of the Plan, including the proposed terms thereof; (d) the Monitor’s commentary on the Plan, including in respect of the fairness to the Affected Creditors (as defined below); (e) overview of the 13-week cash flow projection; and (f) the Monitor’s recommendations.
6. On January 6, 2015, this Honourable Court granted orders approving (collectively the “**January 6 Orders**”):
 - i) the CCAA Order by which EYI was appointed as monitor of the Marine Drive Entities (the “**Monitor**”);
 - ii) the filing of the Plan;
 - iii) a claims procedure pursuant to the CCAA (the “**Claims Process Order**”);
 - iv) a procedure for the Monitor to call, hold and conduct a meeting of creditors to consider and vote on the Plan (the “**Meeting Order**”);

- v) orders consolidating the Bankruptcy Proceedings and ordering that the Claims Process Order would apply to the Bankruptcy Proceedings; and
 - vi) the form of materials to be distributed to creditors affected by the Plan.
7. The Plan was filed by the Petitioners with this Honourable Court on January 7, 2014.

Second Report of the Monitor

8. The purpose of this second report of the Monitor (the “**Second Report**”) is to provide this Honourable Court with information pertaining to, *inter alia*:
- i) the Monitor’s compliance with statutory duties under the CCAA;
 - ii) creditor notification of the Claims Process and Creditors’ Meeting (as defined in the Plan);
 - iii) the claims against the Marine Drive Entities;
 - iv) the conduct and the results of the vote at the Creditors’ Meeting;
 - v) the conditions that must be satisfied by the Petitioners in order for this Honourable Court to sanction the Plan;
 - vi) the conditions that must be satisfied or waived by the Petitioners in order to achieve Plan Implementation (as defined in the Plan);
 - vii) the Monitor’s view on the fairness of the Plan; and
 - viii) the Monitor’s recommendation.

The Monitor’s Website

9. The Monitor has published copies of the First Report, the January 6 Orders and other materials relevant to these insolvency proceedings on a website it has set up www.ey.com/ca/marinedrive (the “**Website**”). The Monitor will continue to make timely

updates to the Website (including the Second Report) as these insolvency proceedings progress to ensure all stakeholders have access to the most current information.

TERMS OF REFERENCE

10. In preparing this Second Report, the Monitor has been provided with, and in making the comments herein relied upon, unaudited financial information, the Petitioners' books and records, financial information prepared by the Petitioners, and discussions with the Principal. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of such information contained in this Second Monitor's Report.
11. This Second Report has been prepared for the use of this Honourable Court and the Petitioners' stakeholders as general information relating to the Petitioners and their operations. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose. The Monitor assumes no responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Second Monitor's Report contrary to the provisions of this paragraph.
12. Capitalized terms not defined in this Second Report have the meaning ascribed to them in the First Report, the Plan, the Claims Process Order, the Meeting Order and/or any other Order referenced in the Second Report.
13. All references to dollars are in Canadian Currency unless otherwise noted.

BACKGROUND

14. A thorough discussion on the background pertaining to the Marine Drive Entities is provided in the First Report, and accordingly, the following section of this Second Report is provided on a summary basis only.

Overview of the Petitioners

15. Since its inception, MDP has developed over \$150 million worth of resort and residential real estate on Vancouver Island.
16. MDP's largest and only remaining development is the "**Wyndansea Development**" in the Municipality of Ucluelet, located beside Long Beach in BC's Pacific Rim National Park Reserve. The legal descriptions of the real property encompassing the Wyndansea Development are summarized below (and are defined as the "**Wyndansea Lands**"):

PID	Legal Description
026 046 024	Lot A, District Lot 472, Clayoquot District, Plan VIP77604
026 508 486	Lot A, District Lots 286, 471, 472 and 473, Clayoquot District, Plan VIP80031, except part in Plan VIP84561
025 635 751	Lot 5, District Lots 286, 471, 472 and 473, Clayoquot District, Plan VIP75113 except part in Plan VIP79908
027 416 046	Lot 1, District Lots 286 and 473, Clayoquot District, Plan VIP84561
027 416 054	Lot 2, District Lot 473, Clayoquot District, Plan VIP84561
027 416 062	Lot 3, District Lot 473, Clayoquot District, Plan VIP84561
Signature Circle (30 individually titled strata lots)	Strata Lots 1-30, Clayoquot District, Strata Plan VIS6504

17. The primary lenders to the Wyndansea Development are a syndicate consisting of Cooper Pacific Mortgage Investment Corporation, Bancorp Balanced Mortgage Fund Ltd., Bancorp Financial Services Inc. and Liberty Holdings Excell Corp. (the "**Priority Mortgagees**").
18. The Priority Mortgagees became the primary lenders to the Wyndansea Development under a loan with an initial principal amount of \$22.5 million, carrying registered first mortgage security over the Wyndansea Lands (the "**Wyndansea Mortgage**").

Previous Insolvency Proceedings

19. On June 24, 2008, the Priority Mortgagees commenced foreclosure proceedings in respect of the Wyndansea Lands, and obtained a certificate of pending litigation, which was registered the following day. The redemption period obtained in the foreclosure proceedings expired on January 14, 2009.
20. On January 15, 2009, MDP, WHI and a related company sought and obtained an initial order under the CCAA on an ex parte basis (the "**Original CCAA Proceeding**"), and EYI was appointed Monitor.
21. The initial order in the Original CCAA Proceeding was set aside on application of a number of the secured creditors, including the Priority Mortgagees, on February 10, 2009.
22. By Order dated April 9, 2009, the Priority Mortgagees were granted conduct of sale over the Wyndansea Lands. The Wyndansea Lands were thereafter listed for sale.
23. Also on April 9, 2009, Hayes McNeill & Partners Ltd. (the "**Receiver**") was appointed by the Honourable Court as receiver-manager of the lands and premises and of certain personal property of WHI, MDP and Loof-Koehler, including the Wyndansea Lands.
24. Between June 12, 2009 and September 14, 2013, the Receiver completed roadwork, street lights and servicing of the Signature Circle subdivision. On December 2, 2010, a certificate of substantial completion was issued for the Signature Circle works and services. 46. The Receiver issued Receiver's Certificates for funds advanced to it, which as of the date of the First Report totalled \$6.2 million (including accrued interest), for all funds borrowed in order to undertake this work. All advances to the Receiver were made by the Priority Mortgagees.

Marketing the Wyndansea Lands

25. In April 2009, the Priority Mortgagees retained CB Richard Ellis to market the Wyndansea Lands at an initial list price of \$37 million. A transaction did not result from the marketing efforts of CB Richard Ellis; and the listing agreement expired.
26. By March 2013, the Priority Mortgagees had retained Jones Lang LaSalle to re-list the Wyndansea Development for sale at a listing price of \$9,950,000. The price for the Wyndansea Development was further reduced on March 14, 2014 to \$7.95 million.

Estimated Market Value of the Wyndansea Lands

27. As of 2014, the BC Assessment Authority values the Wyndansea Development at approximately \$9.5 million.
28. Based on the foregoing and the result of the marketing efforts to date, the Monitor, in its First Report, advised this Honourable Court that it was of the view that the current market value of the Wyndansea Lands is not presently expected to exceed \$10 million.

The Proposed Restructuring Transaction

29. In the summer of 2014, EYI approached a senior representative of the Priority Mortgagees regarding the prospect of facilitating a reorganization of the affairs of the Petitioners, and the Wyndansea Development, through an acquisition of the shares of the Petitioners and of the loans of the Priority Mortgagees by an established real estate developer.
30. Thereafter, EYI contacted a number of established real estate developers whom it believed would be potentially interested in acquiring the Petitioners and the loans of the Priority Mortgagees, and invited them to submit expressions of interest.

31. Following the receipt of a number of expressions of interest, and after consultation with the Priority Mortgagees, EYI determined that the Onni Group was likely to offer the most value to the stakeholders pursuant to a restructuring transaction.
32. In the months that followed, EYI facilitated negotiations among the Petitioners, Elke Loof-Koehler (the "**Principal**"), the Priority Mortgagees and the Onni Group, which ultimately led to a restructuring agreement (the "**Restructuring Agreement**") being entered into on December 17, 2014.
33. In connection with the Restructuring Agreement, on January 6, 2015 the Petitioners, through the Trustee, filed for and were granted protection under the CCAA. On January 7, 2015, the Petitioners filed the Plan with this Honourable Court, which if sanctioned by this Honourable Court, will result in the Onni Group acquiring:
 - i) all of the issued and outstanding shares in each of the Petitioners;
 - ii) the outstanding indebtedness of the Petitioners to the Principal and the General Creditors with Proven Claims; and
 - iii) the outstanding indebtedness of the Petitioners to the Priority Mortgagees.

Affected Creditors under the Plan

34. The Plan establishes the following two classes of creditors for the purposes of voting on, and distributions or dividends pursuant to, the Plan:
 - i) the "**Priority Mortgagee Class**" comprising the Priority Mortgagees claims pursuant to the Priority Mortgages; and
 - ii) all other creditors with a claim that is not in relation to a Priority Mortgage or Excluded Claim (as defined in section 2.6 of the Plan) (the "**General Creditor Class**").

(collectively the "**Affected Creditors**")

35. The Priority Mortgages are defined in the Plan and represent the Wyndansea Mortgage that is held by the Priority Mortgagees.

MONITOR'S COMPLIANCE WITH STATUTORY OBLIGATIONS

36. Within five days of the date of the Initial Order, the Monitor completed the following notice and service requirements:
- i) published in the Vancouver Sun and the Victoria Times Colonist on January 9 and 12, 2015, a notice containing the prescribed information under the CCAA (the "**CCAA Newspaper Notices**");
 - ii) made the Initial Order publicly available by posting a copy on the Monitor's Website;
 - iii) sent, by mail, notice to every known creditor advising them that the Initial Order is publicly available on the Monitor's website (the "**CCAA Creditor Mailing Notice**"); and
 - iv) prepared a list of creditors including the names, addresses, and estimated amounts owed and made the list publicly available on the Monitor's website.
37. Copies of the CCAA Newspaper Notices are attached as **Exhibit "A"** to this Second Report. A copy of the CCAA Creditor Mailing Notice is attached as **Exhibit "B"** to this Second Report.

ADVERTISEMENT OF THE CLAIMS PROCESS AND CREDITORS' MEETING

38. Concurrent with the CCAA Newspaper Notices, the Monitor, as required by the Claims Process Order and Meeting Order, published the Notice of Claims Process and the Notice of the Meeting of Creditors in the Vancouver Sun newspaper and the Victoria Times Colonist newspaper.

39. On January 7, 2015, the Monitor posted copies of the Claims Process Materials, Meeting Materials and the Plan on the Website.

MAILING OF THE CCAA CLAIMS PROCESS AND MEETING MATERIALS

40. Concurrent with the CCAA Creditor Mailing Notice, on January 7, 2015, the Monitor mailed (by ordinary pre-paid mail) to the last known address of each creditor listed in the Petitioners' books and records ("**Creditor**") the Claims Process Materials and the Meeting Materials, including the:

- a) First Report;
- b) Plan Information Letter;
- c) Notice to creditors of the Creditors' Meeting;
- d) Voting Letter and Proxy
- e) Fixed Distribution or Percentage Distribution Option Election;
- f) Notice of the CCAA and BIA Proposal Claims Process;
- g) List of Creditors;
- h) Proof of Claim and Instructions; and
- i) Claim Amount Notice.

CLAIMS AGAINST THE MARINE DRIVE ENTITIES

Overview of Claims Process

41. As detailed in the First Report, the Claims Process Order provided for a claims procedure (the "**Claims Process**") to determine the claims of creditors ("**Claims**") and establish claims bar dates by which creditors must file a Proof of Claim in these CCAA proceedings.
42. The purpose of the Claims Process was to, *inter alia*:

- a. notify known creditors of the amounts owed to them as of the CCAA filing date (as reflected in the books and records of the Petitioners) and the characterization of such amounts (the “**Claim Amount Notice**”);
 - b. provide an opportunity for creditors that do not agree with the amount or characterization of the indebtedness or for which no amount of the claim is stated to file a Proof of Claim by no later than 4:00PM (Pacific Standard Time) on Tuesday, January 27, 2015.
 - c. if a creditor does not receive a Claim Amount Notice or if the creditor does not agree with the Claim Amount Notice, such creditor is required to file a Proof of Claim by no later than 4:00PM (Pacific Standard Time) on January 27, 2015 (the “**Claims Bar Date**”);
 - d. provide the Monitor the ability to revise and/or disallow Proof of Claim forms (a “**Notice of Revision or Disallowance**” or “**NORD**”); and
 - e. allow a creditor to dispute the Notice of Revision or Disallowance provided to such creditor (a “**Notice of Dispute**” or “**NOD**”) and provide a mechanism for resolving such disputes.
43. In its First Report, the Monitor advised this Honourable Court that in preparing for these insolvency proceedings, the Monitor and the Principal of the Marine Drive Entities undertook significant efforts to verify the financial records of the Petitioners and that the Monitor was satisfied that the Petitioners’ books and records were materially accurate.
44. The Monitor further advised this Honourable Court that:
- i) the majority of creditors would receive a Claim Amount Notice;
 - ii) if the Claim Amount Notice was acceptable to the creditor, they would not be required to do anything further in the Claims Process; and
 - iii) the Monitor expected that the majority of the Petitioners’ creditors would not be filing Proofs of Claim.

Results of the Claims Process

45. The Monitor advises this Honourable Court that the Claims Process was conducted in accordance with the provisions of the Claims Process Order.

Priority Mortgagee Class

46. A summary of the secured claims allowed by the Monitor is provided in the table below:

Claimant	# Admitted	Claim Value Accepted (in \$CAD)	
		Secured	Unsecured
The Priority Mortgagees	1	8,116,667	57,230,476.66

47. The Monitor notes that for the purpose of this CCAA proceeding, the Priority Mortgagees valued the security held for their claim at \$8,116,667, and accordingly, the shortfall of the total indebtedness of the Wyndansea Mortgage over the security value (\$57,230,476.66) was admitted as a General Creditor Claim for the purpose of voting on the Plan.

General Creditor Class

48. A summary of the General Creditor Claims allowed by the Monitor is provided in the table below:

	In Number			In Value (in \$CAD)		
	Admitted	Disputed	In Review	Admitted	Disputed	In Review
General Claims	232	1	1	98,715,050	111,942	2,462,636

49. The Monitor has disputed one claim that was filed by the Canada Revenue Agency in respect of:

- i) an estimate of corporate income tax payable since the Petitioners last filed tax returns in 2007 - \$10,254.32; and
- ii) an estimate of Goods and Services (“**GST**”) input tax credits that may have been claimed by the Petitioners, and refunded by the CRA, on outstanding

supplier balances that were never paid - \$1 subject to adjustment based on a future GST audit.

The District of Ucluelet

Background

50. Having been previously provided with their e-mail contact information, on January 9, 2015, the Monitor, in addition to mailing the CCAA Mailing Notice, emailed the CCAA Mailing Notice and related exhibits to senior staff at the District of Ucluelet (the “**District**”) and its legal counsel, Carvello Law Corporation (“**Mr. Carvello**”).
51. In subsequent correspondence, the Monitor described to the District how it would be affected by the Plan as a Creditor of the Petitioners in respect of the following liabilities:

i) Property tax arrears (approximately \$355,000)

The Monitor described that the outstanding property taxes would be paid in full upon the closing of the Restructuring Transaction and that outstanding property taxes were an Unaffected Claim.

ii) Covenant FA 102255 (\$1 million)

Covenant FA 102255 provides for a \$1 million amenity fee (the “**Amenity Fee**”) pursuant to master development agreements that govern the future development of the Wyndansea Development. The Monitor described that the Plan did not seek to discharge this covenant from title and that it was a Permitted Lien for the purpose of the Plan. Mr. Carvello advised the Monitor that the Petitioners were in default of the terms of Covenant FA 102255.

The Monitor has not verified whether the Petitioners are in default of the covenant, although advised the District that the Plan did not seek to

compromise, suspend, delay or affect the rights or remedies of the District on account of the alleged default.

iii) Covenant Modifications FB 222671 and FB 122898 (\$1,107,056.93) (the “Covenant Modifications”)

The Covenant Modifications provide for the calculation of interest on the Amenity Fee. As of the date of this Second Report, the interest outstanding in respect of the Covenant Modifications is approximately \$1.1 million (the **“Outstanding Amenity Fee Interest”**).

The Monitor described to the District that the Plan sought to compromise the Outstanding Amenity Fee Interest as a General Creditor Claim on the basis that the Outstanding Amenity Fee Interest represented a financial charge that did not rank in priority to the Wyndansea Mortgage.

The Monitor further advised the District that it could file a Proof of Claim that asserted that the Covenant Modifications rank in priority to the Wyndansea Mortgage; and that such Proof of Claim would be evaluated by the Monitor and its legal counsel based on its legal merits.

Further Correspondence with the District

52. On January 21, 2015, the District requested a delegation of the Monitor, the Priority Mortgagees and the Onni Group to attend a “Special Meeting of Council” scheduled for January 22, 2015 (the next day) to consider its options in responding to these CCAA Proceedings. In its correspondence, the District advised that it selected the meeting time to facilitate the travel arrangements of the delegates. The District also advised that it required the attendance of a “Corporate Director” of the Onni Group at the Special Meeting of Council.

53. The Monitor, the Priority Mortgagees and the Corporate Directors of the Onni Group were unable to attend to the Special Meeting of Council in person on such short notice, although made arrangements to attend in person or by representative via teleconference.
54. On January 22, 2015, the Monitor, representatives of the Priority Mortgagees and their legal counsel, and legal counsel for the Onni Group attended the Special Meeting of Council by teleconference. The Corporate Directors of the Onni Group had a pre-scheduled conflict that prevented them from also attending.
55. The delegates were advised that a portion of the teleconference would occur “in-camera”. A public hearing was to be held prior to and after the teleconference.
56. The Monitor discussed a number of topics on the teleconference and provided Mayor and Council of the District with an overview of the foregoing Plan.
57. On January 23, 2015, Mr. Carvello wrote all parties concerning these CCAA proceedings to advise them of the following (the “**Mr. Carvello Letter**”) (a copy of the Mr. Carvello letter is attached as **Exhibit “C”** to this Second Report):
- i) Council of the District are of the firm opinion that fairness and equity require the payment of the Amenity Fee that pre-dated the Wyndansea Mortgage, and fair settlement of the Outstanding Amenity Fee Interest given the District’s forbearance of other remedies and cooperation with all parties to allow restructuring and sale of the lands.
- Monitor’s Comment:** The Amenity Fee is payable pursuant to a Permitted Lien and will not be discharged or compromised by the Plan. The Monitor notes that the Plan seeks to discharge numerous mortgages, liens and other financial charges registered on the title of the Wyndansea Lands, including the Covenant Modifications.

The Monitor is of the view that there is no equity value of any financial charge that ranks behind the first Wyndansea Mortgage (with exception for the Unaffected Claims and Permitted Liens) and that the District does not warrant special treatment relative to other mortgagees, lien claimants or General Creditor Claims in respect of the Outstanding Amenity Fee Interest.

The Monitor further notes that the alternative to the Plan is the sale of the Wyndansea Lands via foreclosure, which would engage the same issue regarding priority of the Outstanding Amenity Fee Interest.

- ii) The District considers it has been unjustly treated given the timing of the proceedings during the District Office Holiday Closure, the lack of notice and the lack of identification of pertinent information to the Court in the CCAA Proceedings regarding the District's Interests.

Monitor's Comment: The CCAA Proceedings were commenced on January 6, 2015, subsequent to the District Office Holiday Closure. The District was provided notice of these insolvency proceedings in accordance with the Orders of this Honourable Court and at the same time as all other Affected Creditors, the timing of which is analogous to the statutory timelines for a BIA proposal. The Monitor also notified several senior representatives of the District and its legal counsel of these proceedings by email on January 9, 2015 and had numerous exchanges with the District thereafter.

The Monitor is of the view that the Petitioners provided this Honourable Court with all pertinent information in the application for the Initial Order and the Monitor has used its best efforts to provide all stakeholders,

including the District, with as much information as possible for consideration in the sanctioning of the Plan.

The Monitor is of the view that the District has been treated equitably with all other Affected Creditors.

- iii) Council was disappointed that the parties who were invited to the Special Meeting of Council chose not to participate.

Monitor's Comment: The Monitor notes that the District expresses disappointment that the parties were unable to attend in-person the Special Meeting of Council, which would have required significant travel and expense, on one days' notice. The Monitor, the Priority Mortgagees and their legal counsel and legal counsel for the Onni Group attended the Special Meeting of Council by teleconference.

- iv) The District and its legal counsel are authorized to dispute, if deemed in the best interests of the District, any decision that does not include prompt payment of property taxes and the Amenity Fee.

Monitor's Comment: Outstanding property taxes will be paid on the closing of the Restructuring Transaction. The Amenity Fee is not sought to be compromised in the Plan by virtue of the District's status as holder of a Permitted Lien and the District can pursue its remedies in accordance with the terms of the Plan.

58. There have been numerous exchanges since the date of the Mr. Carvello Letter between the District, the Monitor and its counsel, and the legal representatives of the Onni Group and the Priority Mortgagees. Notably, Mr. Carvello requested adjournments to both the Creditors' Meeting and the Sanction Hearing.

59. The Monitor refused to adjourn the Creditors' Meeting and has advised Mr. Carvello that it would not agree to an adjournment of the Sanction Hearing.

60. The District further advised that it would be seeking various amendments to the Plan and would be filing additional materials with this Honourable Court in that regard. Accordingly, the Second Report may not have addressed all the materials submitted by the District to this Honourable Court.

Proof of Claim filed by the District

61. On January 22, 2015, the District filed a voluminous Proof of Claim with the Monitor, a copy of which is attached (without attachments representing several hundred pages) as **Exhibit “D”** to this Second Report.

62. In its Proof of Claim, the District asserted that the Petitioners are indebted to the District in the amount of \$2,107,056.93 plus outstanding property tax arrears of approximately \$355,578.61 (total of \$2,462,635.54) (the “**District’s Claim**”). The District categorized its claim into the following two components:

- i) a secured claim of \$1,355,000 respecting the Amenity Fee and the outstanding property taxes; and
- ii) an unsecured claim of \$1,107,056.93 respecting the Outstanding Amenity Fee Interest.

63. The District further asserted its position that the District’s Claim should be paid in full, and it proposed several alternatives for the treatment of the District’s Claim pursuant to the Plan.

64. The Monitor is reviewing the District’s Claim; however it is of the preliminary view that the Amenity Fee is not a claim provable in bankruptcy, and that admitting the District’s Claim as filed may result in the compromise of the Amenity Fee pursuant to the terms of the Plan to the detriment of the District.

CREDITORS' MEETING

Conduct of the Creditors' Meeting

65. Pursuant to the Meeting Order, the Monitor was authorized to convene, hold, and conduct the Creditors' Meeting on the Creditors' Meeting Date (as defined below) to consider and vote on the Plan.
66. The Creditors' Meeting was called to order at 10:03 am (Pacific Time) on January 28, 2015 (the "**Creditors' Meeting Date**") at the offices of McMillan LLP, located at 1500-1055 West Georgia Street, Vancouver, BC.
67. Mr. Mike Bell, Vice President of EYI, acted as Chair to conduct the Creditors' Meeting. Mr. Bell appointed Mr. Chris Pattinson of EYI to act as Scrutineer and Mr. Peter Reardon of McMillan LLP acted as Secretary at the Creditors' Meeting. Representatives of the Petitioners were available to answer questions.
68. Aside for the Monitor and its legal counsel, the Creditors' Meeting was attended by:
 - i) Mr. David Gruber, counsel for the Onni Group;
 - ii) Mr. Robert Millar, counsel for the Principal;
 - iii) Mr. Les Fovenyi, Chief Operating Officer of the Onni Group; and
 - iv) Mr. Doug Bentley, proxy holder representing the Priority Mortgagees.
69. Mr. Carvello requested to attend the Creditors' Meeting by teleconference on behalf of the District, and such request was granted by the Monitor.
70. With greater than one Affected Creditor (as defined in the Meeting Order) holding a valid Claim present, either in person or by proxy, the Chair declared that a quorum for the Creditors' Meeting had been achieved and that the Meeting was properly constituted to consider and vote on the Plan and any other matter that might properly come before the meeting.
71. The Chair advised the Affected Creditors that the purpose of the Creditors' Meeting was, *inter alia*, to: (a) consider the background to the proceedings and the Petitioners to

provide context to the Plan; (b) consider the purpose and terms of the Plan; (c) consider the Monitor's recommendation pertaining to the Plan; (d) to vote on the Plan; (e) report on the results of the votes pertaining to the Plan; and (f) outline the procedural next steps based on the result of the vote on the Plan.

Motions of the District

72. At the Creditors' Meeting, Mr. Carvello brought five separate motions to propose amendments to the Plan and the characterization of the District's Claim thereunder. Mr. Carvello brought an additional motion to have certain parties disclose or clarify certain terms of the Restructuring Agreement that were not directly related to the Plan.
73. Several parties present at the Creditors' Meeting noted procedural objections to Mr. Carvello's motions, and as a consequence, none of the motions were seconded by any of the Creditors present in person or by proxy.
74. Notwithstanding the foregoing, the Chair convened a vote of Affected Creditors on each of the five motions for the purpose of reporting to this Honourable Court on the voting results thereon; in the event the procedures of the motions were set aside by this Honourable Court.
75. Each motion brought by Mr. Carvello did not achieve the Required Majority (as defined in the Plan) of Affected Creditors. The Monitor notes that it did not vote any of the proxies where it was named as a proxy holder.

Results of Vote

Priority Mortgagee Class

76. The result of the vote of the Priority Mortgagee Class on the resolution to affirm the Plan was as follows:

Summary of Voting Results				
	By Number		By Value	
Votes Cast	Amount	%	Amount	%
Accepted:				
In Favour ¹	1	100%	\$8,116,667	100%
Against	Nil	Nil%	Nil	Nil%
Total	Nil	100%	\$8,116,667	100%
Disputed:				
In Favour	Nil	Nil%	\$Nil	Nil%
Against	Nil	Nil%	Nil	Nil%
Subtotal	Nil	Nil%	\$Nil	Nil%
Total:				
In Favour	1	100%	\$8,116,667	100%
Against	Nil	Nil%	Nil	Nil%
Total	1	100%	\$8,116,667	100%

General Creditor Class

77. The result of the vote of the General Creditor Class on the resolution to affirm the Plan, excluding the vote of the Principal, was as follows:

Summary of Voting Results				
	By Number		By Value	
Votes Cast	Amount	%	Amount	%
Accepted:				
In Favour ¹	104	99%	\$77,601,931	96.9%
Against	1	1%	\$2,462,636	3.1%
Total	105	100%	\$80,064,567	100%
Disputed:				
In Favour	Nil	Nil%	\$Nil	Nil%
Against	Nil	Nil%	Nil	Nil%
Subtotal	Nil	Nil%	\$Nil	Nil%
Total:				
In Favour	104	99%	\$77,601,931	96.9%
Against	1	1%	\$2,462,636	3.1%
Total	105	100%	\$80,064,567	100%
Notes:				
1. Includes those General Creditors voting personally or by Proxy at the Creditors' Meeting and those deemed to have voted in favour of the Plan pursuant to the terms thereof.				

78. The Monitor notes that the District represented the only vote against the Plan. The Monitor admitted the full amount of the District's Claim for the purpose of voting on the Plan only.
79. In addition to the foregoing, Mr. Millar voted the claim of the Principal in favour of the Plan. The Monitor advised Mr. Millar that the Principal likely qualified as a related party that would not be permitted to vote in favour of the Plan.
80. The result of the vote of the General Creditor Class on the resolution to affirm the Plan, should the Principal's vote be taken into consideration, is as follows:

Summary of Voting Results				
	By Number		By Value	
Votes Cast	Amount	%	Amount	%
Accepted:				
In Favour ¹	105	99%	\$81,877,258	97.1%
Against	1	1%	\$2,462,636	2.9%
Total	106	100%	\$84,364,567	100%
Disputed:				
In Favour	Nil	Nil%	\$Nil	Nil%
Against	Nil	Nil%	Nil	Nil%
Subtotal	Nil	Nil%	\$Nil	Nil%
Total:				
In Favour	105	99%	\$81,877,258	97.1%
Against	1	1%	\$2,462,636	2.9%
Total	106	100%	\$84,364,567	100%
Notes:	2. Includes those General Creditors voting personally or by Proxy at the Creditors' Meeting and those deemed to have voted in favour of the Plan pursuant to the terms thereof.			

Monitor's Comments

81. The Monitor notes that there were no disputed claims voted at the Creditors' Meeting.
82. Pursuant to the foregoing, the requisite majorities as stipulated in the CCAA were achieved for the Priority Mortgagee Class and the General Creditor Class:
- a) The number of affirmative votes exceeded fifty percent (50%) of the Votes Cast:
 - Priority Mortgagee Class – 100%
 - General Creditor Class (excluding the vote of the Principal) – 96.9%
 - General Creditor Class (including the vote of the Principal) – 97.1%

- b) The value of the Proven Voting Claims attributable to Affirmative Votes equals or exceeds sixty-six and two-thirds percent (66 2/3%) of the value of the Proven Voting Claims attributable to the votes cast:

Priority Mortgagee Class – 100%

General Creditor Class (excluding the vote of the Principal) – 99.0%

General Creditor Class (including the vote of the Principal) – 99.1%

83. Based on the foregoing, the Monitor declared that the Plan obtained the requisite approval of Affected Creditors to affirm the Plan, and as such a condition precedent to implementation of the Plan was satisfied.

CONSIDERATIONS PRIOR TO SANCTIONING THE NEW PLAN

84. The CCAA provides certain statutory requirements for consideration by the Court prior to the sanctioning of a plan of compromise and arrangement. These statutory compliance considerations (and the Monitor's comments on the applicability of each in this case) include the following:

- a) Achieving a requisite vote of the creditors on a plan of compromise and arrangement representing a majority of the creditors and two thirds in value of the creditors present and voting either personally or by proxy at the meeting of creditors:

- i. **Monitor's Comment:** The Monitor advises this Honourable Court, that as outlined above, the requisite majority of General Creditors for the General Creditor's Class was achieved.

- b) The plan of compromise or arrangement provides for payment in full to the Crown or a province within six months of sanctioning of the compromise or

arrangement of all amounts that were outstanding at the date of the making of the Initial CCAA Order and are of a kind that could be subject to: (i) demand under s. 224(1.2) of the Income Tax Act (Canada) (the “**ITA**”); (b) any provision in the Canada Pension Plan (the “**CPP**”) or Employment Insurance Act (the “**EIA**”) that refers to ITA s. 224(1.2) and provides for collection of a contribution under the CPP, an employee’s premium or employer’s premium under the EIA and related interest and penalties; (iii) any provision in provincial legislation that has a similar purpose to ITA s. 224(1.2) and provided for collection of a sum (including related interest and penalties) and such amount has been withheld or deducted from a payment to a person and is of a nature similar to the income tax imposed under the ITA and/or is in the same nature of a contribution under the CPP (with conditions):

- i. **Monitor’s Comment:** The Monitor advises this Honourable Court that Article 3 of the Plan provides for payment within six months of sanctioning of the Plan of the Crown Claims.
- c) If the CCAA Order had the effect of staying the Crown, then at the time the Court hears the application for sanction of the plan or compromise and arrangement, the debtor shall not be in default of any remittance that became due to the Crown after the making of the Initial Order:
- i. **Monitor’s Comment:** Monitor advises this Honourable Court that the Petitioners are not in default of any remittance in favour of the Crown in respect of the period commencing after the making of the CCAA Order, to and inclusive of the date of this Second Report.

- d) The plan of compromise and arrangement provides for, and the Court is satisfied that the debtor can make payment to employees and former employees of the debtor immediately after sanctioning of: (i) amounts at least equal to the amounts they would have been qualified to receive under s. 136 of the BIA if the debtor had become bankrupt on the day on which the proceeding commenced; and (ii) wages and other compensation earned during the tenure of the CCAA proceeding:
- i. **Monitor's Comment:** The Monitor advises this Honourable Court that all amounts in respect of wages and/or other amounts that would be deemed payable pursuant to the above outlined provisions will be paid on the Implementation Date.
- e) The plan of compromise and arrangement provides for, and the Court is satisfied that the debtor can make (with exceptions) payment in respect of pension plans of all amounts deducted from the employees remuneration and: (i) an amount equal to the normal cost payments that were required to be paid by the employer (in the case of a defined benefit pension plan); or (ii) the sum of all amounts that were to be contributed by an employer (in the case of a defined contribution plan):
- i. **Monitor's Comment:** The Monitor advises this Honourable Court that the Petitioners did not administer a pension plan and accordingly this statutory requirement is not considered relevant.
- f) The plan or compromise and arrangement shall not provide for payment of an equity claim until all claims that are non-equity are paid in full.

- i. **Monitor's Comment:** The Monitor advises this Honourable Court that the Plan does not consider payments on account of equity claims.

85. Generally, the Monitor is not aware of any fact that would indicate that the Petitioner is not acting in good faith in respect of the Plan.

CONDITIONS TO ACHIEVING PLAN IMPLEMENTATION

86. The major conditions of the Plan as related to implementation and the anticipated satisfaction date for such conditions include (capitalized terms not defined herein are as defined in the Plan) the following:

	Event	Anticipated Date
1.	Plan approved by the requisite majority of General Creditors	Satisfied – January 28, 2015
2.	Declaration that the funds available to the General Creditors Fund and paid to the Monitor by the Petitioners will be held by the Monitor in trust for the Proposal Trustee to be paid by the Proposal Trustee in accordance with the provisions of this Plan and that the vesting of the Petitioners' assets in the Bankruptcy Trustee is stayed pending the conclusion of the BIA Proposal process	January 29, 2015
3.	CCAA Sanction Order granted by this Honourable Court	January 29, 2015
4.	Affected Creditor claims in the Affected Creditor Class assigned to the Monitor for voting purpose on the BIA Proposal	January 29, 2015
5.	Filing of BIA Proposal	January 30, 2015
6.	Petitioners make payment to the Monitor of the distribution fund for the General Creditors	January 30, 2015
7.	Application filed on behalf of the Petitioners for BIA Approval Order	January 30, 2015
8.	<u>Occurrence of BIA Creditors' Proposal Meeting</u> Monitor votes all the Affected Creditors' Claims in respect of the BIA Proposal in the same manner as such Affected Creditor Claims were voted in respect of the Plan, and that Affected Creditors will not otherwise be entitled to vote in respect of the	February 2, 2015

	Event	Anticipated Date
	BIA Proposal	
9.	BIA Approval Order granted by this Honourable Court	February 3, 2015
10.	Expiry of appeal of the CCAA Sanction Order	February 19, 2015
11.	Expiry of appeal of the BIA Approval Sanction Order	February 13, 2015
12.	Releases and injunctive relief provisions of the Plan and BIA Proposal become effective	March 3, 2015
13.	Assignment of Claims (as defined in Plan) and Affected Creditor Claims from Affected Creditors to Petitioners	March 3, 2015
14.	Distribution by the Proposal Trustee of the distribution fund to the Affected Creditors contained in the Affected Creditor Class	March 3, 2015
15.	Annulment of the Bankruptcy	March 3, 2015

87. The Monitor advises this Honourable Court that the Petitioners and its legal advisors are working diligently to satisfy the conditions precedent to implementation of the Plan.

FAIRNESS OF THE PLAN

88. In its First Report, the Monitor estimated that the market value of the Wyndansea Lands would not exceed \$10 million, before selling and after sales service costs (i.e. commissions and after sales service).
89. The Monitor also notes that the Affected Creditors overwhelmingly supported the Plan.
90. Accordingly, the Monitor is satisfied that the value of the security held in respect of the Priority Mortgages could not satisfy the obligations thereunder, and the Monitor does not envision any scenario where a distribution would be available to the General Creditor Class through an orderly sale of the Wyndansea Lands in bankruptcy.

MONITOR'S RECOMMENDATIONS

91. The Monitor recommends sanctioning the Plan on the basis that:

- i) The Plan was approved by the requisite majority of creditors of the General Creditors Class in accordance with the provisions of the CCAA;
- ii) The Petitioners have maintained compliance with the statutory provisions of the CCAA that would permit this Honourable Court to sanction the Plan;
- iii) The Plan achieves a return to the General Creditor Class that is superior to that achievable in alternative insolvency proceedings (a receivership or bankruptcy);
- iv) The conditions precedent to the sanctioning of the Plan by this Honourable Court have been satisfied; and
- v) The Plan presents a viable option for the continuance of development and sales activity in respect of the Remaining Property and provides financial viability of the Petitioner on a go-forward basis.

All of which is respectfully submitted this 28th day January, 2015.

ERNST & YOUNG INC.

In its capacity as Monitor of
the Marine Drive Entities
and not in its personal capacity

Per:

A handwritten signature in black ink, appearing to be 'Mike Bell', written over a light grey grid background.

Mike Bell, CA, CIRP
Vice President