

04-Jul-23

REGISTRY

This is Affidavit #1 of Michael Bell in this proceeding and was made on June 30, 2023

No. S1710393  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c.57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

**AFFIDAVIT #1 OF MICHAEL BELL**

I, Michael Bell, of 1133 Melville St., Suite 1900, The Stack, Vancouver BC V6E 4E5, SWEAR THAT:

1. I am a Senior Vice President of Ernst & Young Inc. ("EY"). EY was retained by McEown & Associates Ltd. (the "**Monitor**"), in its capacity as Court Appointed Monitor of All Canadian Investment Corporation ("**ACIC**") in these proceedings.
2. I have approximately 15 years' experience in the insolvency and corporate restructuring industry, and have worked for EY since January 2008. I am a Licensed Insolvency Trustee, I received my CIRP designation in 2011, am a Chartered Accountant by training, and hold a Degree in Commerce (Honours) in Accounting from McMaster University. I have acted as a court officer or financial advisor on numerous insolvency and restructuring mandates to date in my career, and have acted in numerous court-ordered sale processes including complex transactions. In my opinion EY is

one of the industry leaders in the insolvency, restructuring and corporate finance spaces, and ranks among the top firms in those industries in Canada.

3. My experience working on large and complex insolvency mandates includes the matters of SEFC Properties Ltd. (Olympic Village), Blackburn Developments Ltd. (The Falls Golf Club), Marine Drive Properties Ltd. (Wyndansea Hotel), and Channel Ridge Properties Ltd., among others.
4. I swear this affidavit in support of ACIC's application for orders to approve the Transaction Commission Agreement and the Share Transaction (as defined below).

### **Transaction Commission Agreement**

5. On January 5, 2023, the Monitor on behalf ACIC entered into an agreement with EY (the "**Transaction Commission Agreement**") in connection with a proposed, direct or indirect, sale of or an investment in some or all of the assets comprising ACIC, including by way of joint venture or otherwise. A copy of the Transaction Commission Agreement is attached hereto and marked as **Exhibit "A"**.
6. EY and the Monitor agreed to a "**Success Fee**" equal to 20% of the Transaction Value (as defined in the Transaction Commission Agreement) to a maximum of \$250,000 (plus applicable sales taxes).
7. EY acknowledged in the Transaction Commission Agreement that any fee payable pursuant to the Transaction Commission Agreement is expressly subject to approval of the Court in the CCAA proceedings; although the ACIC and the Monitor agreed to recommend, and make reasonable efforts to secure, Court approval of any Success Fee.

### **Process resulting in the Share Transaction**

#### ***Identifying Prospective Purchasers***

8. In accordance with the Transaction Commission Agreement, EY prepared a list of five (5) credible prospective purchasers of ACIC's property (the "**Prospective Purchasers**").
9. The Prospective Purchasers included companies and other investors active in the market for distressed assets and other financial attributes.

10. Based on my experience in restructuring matters and sale processes, I believe that the Prospective Purchasers included the parties most likely to make a credible bid for ACIC.
11. Prior to contacting the Prospective Purchasers, EY prepared draft financial statements for ACIC for the fiscal years ended September 30, 2018 to September 30, 2022 based information provided by the Monitor and ACIC. The financial statements prepared by EY were required to permit the Prospective Purchasers to assess the value of ACIC's assets, including the non-transferrable tax attributes of ACIC.
12. EY did not invoice separately for this time, and it is contemplated that EY will be compensated for this work through the contingent Success Fee.
13. EY also worked with ACIC's counsel to prepare a form of Term Sheet for the Prospective Purchasers to use in submitting their offers should they wish to do so.
14. In late January and early February 2023, EY contacted each of the Prospective Parties and provided, inter alia, the following:
  - (a) an estimated Income Statement and Balance Sheet for ACIC by year from 2017 to 2022;
  - (b) details of Mortgage CA6412099 owned by ACIC (the "**Buchmann Mortgage**");
  - (c) the most recent audited financial statements prepared for fiscal year end 2017; and
  - (d) copies of the last filed tax returns for the year-ended September 30, 2017.
15. EY responded to a number of inquiries and information requests made by the Prospective Purchasers and coordinated with the Monitor and ACIC to provide responses to those requests.

***Receipt of Proposals***

16. EY received two (2) offers from the Prospective Purchasers (the "**Offers**"), both of which contemplated an acquisition of the equity in ACIC:
  - (a) Offer #1, for a purchase price of \$1,850,000; and
  - (b) Offer #2, from Bosa Properties (OC) Inc., for a purchase price of \$1,800,000.

17. After reviewing the Offers and in consultation with the Monitor and ACIC's counsel, the Monitor made a counteroffer of \$2,000,000, which was based on:
  - (a) a \$400,000 valuation of the Buchmann Mortgage (being a discount from the face value of \$500,000 to reflect the costs of realization and time); and
  - (b) \$1,600,000 representing the other attributes of ACIC.
18. As a result of these negotiations, the Monitor executed a term sheet (the "**Term Sheet:**") submitted by Bosa Properties (OC) Inc. (the "**Successful Purchaser**"), for a purchase price of \$2,000,000, which was the superior offer.
19. The Term Sheet provided the Successful Purchaser with a period of 60 Days to complete a due diligence investigation, with results satisfactory to the Successful Purchaser in its full discretion (including but not limited to investigations into ACIC's financials and tax returns, outstanding loan/mortgage, status/impact of shareholder claims, and decisions to-date by the Court in respect of this matter).
20. The Successful Purchaser subsequently retained external counsel and undertook a substantive review of the assets and affairs of ACIC, including the various orders made in these proceedings, the disciplinary order made by the BC Securities Commission and other matters. EY and legal counsel to ACIC fielded and responded to these inquiries.
21. After a series of queries and follow-ups, on June 12, 2023, counsel for the Successful Purchaser notified EY and ACIC that it had completed its due diligence as was prepared to complete the Share Transaction.
22. Legal counsel for ACIC and the Successful Purchaser then negotiated and prepared documentation required to effect the Share Transaction including:
  - (a) Share Purchase Agreement;
  - (b) proposed amendments to the Plan of Arrangement; and
  - (c) a proposed Amended and Restated Sanction Order.
23. EY has provided assistance and recommendations to the parties throughout the negotiation and preparation of those documents.

24. EY has not, and will not be, rendering fees to the Prospective Purchaser for its attendances in respect to the Share Transaction and its only remuneration will be through the Transaction Commission Agreement.

**Opinion on the Share Transaction**

25. In my opinion, any further marketing of ACIC's assets is unlikely to secure a materially better purchase price than the \$2,000,000 offered by the Successful Purchaser, and would result in further delays in closing the transaction.

26. In my opinion, certain preferred shareholders of ACIC may benefit from the structure of the proposed Share Transaction, as they will incur a loss for tax purposes if their shares in ACIC are cancelled.

SWORN BEFORE ME at West Vancouver, )  
British Columbia, on the 30<sup>th</sup> day of June, )  
2023. )

\_\_\_\_\_)  
A commissioner for taking affidavits for )  
British Columbia )

  
\_\_\_\_\_) **MICHAEL BELL**

**JOSEPH M. FINGEROTE**  
*Barrister & Solicitor*  
**WATSON GOEPEL LLP**  
203 - 2403 Marine Drive  
West Vancouver, B.C. V7V 1L3  
Tel: 604-913-2100 Fax: 604-688-8193

This is Exhibit "A" to the Affidavit of

Michael Bell

sworn the 30 day of June,  
2023

A Commissioner for taking Affidavits within  
British Columbia

**JOSEPH M. FINGEROTE**  
*Barrister & Solicitor*  
**WATSON GOEPEL LLP**  
203 - 2403 Marine Drive  
West Vancouver, B.C. V7V 1L9  
Tel: 604-913-2100 Fax: 604-988-8183

PRIVATE AND CONFIDENTIAL

5 January 2023

All Canadian Investment Corporation  
c/o McEown & Associates Ltd.  
110 - 744 West Hastings Street  
Vancouver BC V6C 1A5

Dear Mr. McEown:

This engagement letter, together with any attachments (collectively, the "**Agreement**") confirms the terms and conditions on which Ernst & Young Inc. ("EYI" or "EY") has been engaged by the All Canadian Investment Corporation (hereinafter collectively referred to as, the "**Company**") to provide certain professional services (the "**Services**").

### Scope of Services

We will provide you with the following services in connection with a proposed, direct or indirect, sale of or investment in (collectively, the "**Transaction**") some or all of the assets comprising the Company (the "**Business**"), including by way of joint venture or otherwise.

- Review and compile information related to the Business for purpose of third party investment, debt acquisition or otherwise;
- Advise on realization strategies;
- Assist with, identify and contact qualified prospective purchasers, investors and/or lenders ("**Prospects**");
- Discuss with you the merits and issues regarding the written letters of intent ("**LOI**") received from Prospects, to assist in your evaluation and assessment of the LOI's, and advise you regarding those qualified for further consideration based upon, *inter alia*, indicative pricing, transaction risk, timeline and deal structure;
- Assist you in the administration of the due diligence process, on behalf of the prospects;
- Assist you in your negotiations with qualified Prospects to formalize and execute an LOI on terms satisfactory to you; and
- Provide comments to you and your legal advisors regarding the negotiation and documentation of definitive agreements.

The Services are advisory in nature. EYI shall exercise due professional care and competence in the performance of the Services. You shall make all management decisions and perform all management functions related to the Services, including: (i) determining whether the Services are appropriate for your purposes; (ii) approving the transaction strategy; (iii) approving prospective purchasers before they are contacted; (iv) approving specific information being disclosed to

prospective purchasers; (v) selecting the best proposal, after our analysis and comparison; (vi) approving the commencement and disposition of investment process; and (vii) agreeing to the definitive LOI documents.

As is typical in any transaction, the structure and nature of the project may change as discussions with potential parties progress. You acknowledge that this engagement has been undertaken on the basis that various structures may need to be considered in order to successfully complete a transaction.

EYI has undertaken an inquiry of its available records to determine whether potential conflicts of interest might exist with respect to the performance of the services in respect of this matter. We do not believe that any conflict of interest exists that would prevent us from providing the services. However, the wide range of services provided by EYI and other EY Firms for a large number of clients, as well as changing circumstances, means that our systems cannot identify each and every potential conflict of interest. The parties agree that EYI shall not be deemed to have a conflict of interest simply because EYI or another EY Firm provides or has previously provided unrelated services to potential counterparties to this transaction.

### **Contacts**

Your primary contact at EY for these Services will be Mr. Mike Bell.

### **Fees**

#### *EYI*

In consideration of the foregoing, upon completion of the Transaction EYI shall be entitled to a success fee ("**Transaction Fee**") equal to 20% of the Transaction Value (as defined below) to a maximum of \$250,000. You will agree to provide an irrevocable direction to legal counsel to pay such fees, net of the creditable amounts set out below, on the closing of any Transaction.

#### *Future Fee Recovery*

It is acknowledged that the fees (as detailed above) and other costs (as detailed below) incurred by the Company in respect of EYI and the other service providers will be recovered by the Company from future distributions contemplated in the Transaction.

#### *General*

All fees are in Canadian dollars unless otherwise specified. Applicable taxes will be added to all fees.

#### Court Approval

EYI is aware that the Company is subject to proceedings commenced in the Vancouver Registry of the Supreme Court of British Columbia under the *Companies' Creditor Arrangement Act* (the "CCAA Proceedings"). As a result, the operations of the Company and actions of McEown &

Associates Ltd. in its capacity as court appointed monitor of the Company (the "Monitor"), are subject to the supervision of the Supreme Court of British Columbia.

EYI acknowledges and agrees that:

- (a) any Transaction which the Company is desirous of entering into; and the terms of the Agreement; and
- (b) EYI's entitlement to payment of a Transaction Fee

are expressly subject to approval of the Court in the CCAA Proceedings.

In the event that EYI assists the Company to enter into a Transaction on the terms contemplated herein, the Company and the Monitor will recommend, and make reasonable efforts to secure, Court approval of the Transaction, the Agreement, and payment of the Transaction Fee in the CCAA Proceedings.

In the event that the approval is not provided the parties agree that the Agreement will automatically be cancelled

For the purposes of this Agreement:

**"Transaction Value"** shall be calculated based on the successful completion of the Transaction and shall include amounts received or receivable or paid or payable, directly or indirectly, from a sale or investment by a third party. Where there is a transaction involving the Business, the Transaction Value shall comprise the sum of the following components:

- (a) The amount of cash consideration received from third party investors to and including the closing of the Transaction;
- (b) Payments to creditors, secured, unsecured or otherwise on account of a debt restructuring;
- (c) The fair market value of any marketable securities or other non-cash consideration received that has the same outcome as contemplated in (a) above;
- (d) Any interest bearing or non-interest bearing debt of the Business assumed by the Prospect;
- (e) The value of any contingent payments contemplated by the Transaction (excluding resulting from the disposition of assets within the Business) to be received by the Company in the future; and
- (f) Net gain realized or realizable by the Company that results from the Transaction.

In arriving at the proposed fee structure, we have relied upon the information provided by you regarding the Business' current and prospective market position and its current financial state. In the event of an adverse change in the market position, financial performance and/or costing analysis related to the Business we would anticipate negotiating with you, in good faith, a revised fee arrangement.

We would also expect to negotiate with you, in good faith, a revised fee arrangement where, after having executed a LOI, the Transaction is unable to be completed due to circumstances within the control of the Company. Circumstances considered to be outside your control would include situations where the Prospect party significantly amends its offer from the LOI or where you have a *bona fide* business reason for not completing the Transaction, provided such reason is consistent with the executed LOI or your stated objectives.

### **Expenses**

The costs of administrative items such, *inter alia*, telephone, research material, facsimile, overnight mail, messenger, administrative support, will be billed to the Company at 5% of EYI's fees for professional services. Reasonable and customary out-of-pocket expenses for items such as travel, meals, accommodations and other expenses specifically related to this engagement will also be charged.

In addition, a transaction of this nature may benefit from the use of an electronic data room for the timely processing of due diligence. In the event you elect to use an electronic data room, those expenses will be reimbursed to us. Expenses shall be reimbursed irrespective of whether or not you complete the proposed Disposition or any part thereof.

Payment of our invoices is due upon receipt. Interest on overdue accounts accrues at 12% per annum starting 30 days following the date of our invoice. We may suspend performance of the Services in the event you fail to pay our invoice.

### **Termination**

EYI's engagement hereunder may be terminated at any time with or without cause by either you or EYI upon ten days written notice thereof to the other party, provided; however, that in the event of any termination, EYI will continue to be entitled to payment of the full amount of the Transaction Fee and to retain any other rights arising from completion, if a transaction is consummated within eighteen (18) months of termination with a Prospect, or affiliated company, who EYI had contacted in connection with the Transaction, who received information during our engagement, or who had been identified by EYI and not contacted based on instructions from you. Any termination of EYI's engagement hereunder shall not affect your obligation to pay fees earned and expenses incurred prior to such termination.

### **Publication**

Appropriate reference shall be made to EYI in any press releases and other media communications regarding the Disposition. Following completion of the Disposition, EYI shall have the right to use your name and trade-mark and the Business name and trade-mark, as well as other public information on the Disposition, in promotional materials; such as marketing tombstones.

**Other**

The attached General and Supplemental Terms and Conditions form an integral part of our Agreement. However, in the event of any conflict the body of this engagement letter has precedence.

The acceptance and execution of this engagement, including the consummation of the Transaction, shall not invalidate the acceptance by EYI of any future engagement involving the Business.

Please sign this letter in the space provided below to indicate your agreement with these arrangements and return it to the undersigned so that we may begin work. Thanks again for your selection of our firm.

Yours truly,

**ERNST & YOUNG INC.**

Per:



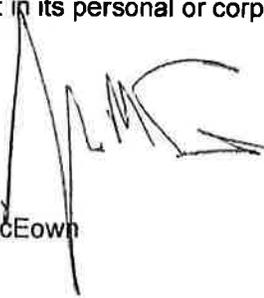
Mike Bell  
Senior Vice President

We hereby confirm the terms of the foregoing engagement

**ALL CANADIAN INVESTMENT CORPORATION**  
**by McEown & Associates Ltd.**

in its capacity as Court Appointed Monitor of  
All Canadian Investment Corporation  
and not in its personal or corporate capacity

Per:



John McEown

## General terms and conditions

- **EY network.** EY is a member of the global network of Ernst & Young firms ("EY Firms"), each of which is a separate legal entity. EY may, subject to the prior consent of the Company, subcontract portions of the Services to other EY Firms, as well as to other service providers, who may deal with Client directly. Nevertheless, EY alone will be responsible to Client for any Reports, the performance of the Services, and EY's other obligations under this Agreement.
- **Responsibilities.** Client will provide EY with timely access to the information, personnel and assistance EY requires in order to perform the Services. All information provided to EY shall be accurate and complete, to the best of Client's knowledge. Unless otherwise expressly agreed, EY will rely on information provided to it without independently verifying accuracy or completeness. EY will use all reasonable efforts to complete the Services within any agreed time-frames (but EY will not be liable for delays that are beyond its control). Client shall make all management decisions related to the Services, including determining whether the Services are appropriate for its purposes.
- **Reports.** Any information, advice, recommendations or other content of any reports, presentations or other communications EY provides under this Agreement ("Reports") are for Client's internal use. Client may not disclose a Report (or any portion or summary of a Report) to any third party, except as noted in the foregoing provisions of this Agreement, or refer to EY or to any other EY Firm in connection with the Services, except with EY's prior written consent or to the extent a Report contains Tax Advice (as defined below). Reports are not intended to be relied upon by any third party. Client may not rely on any draft Reports.
- **Tax Advice.** Client may disclose to anyone a Report (or a portion thereof) solely to the extent that it relates to tax matters, including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate ("Tax Advice"). With the exception of tax authorities, Client shall inform those to whom it discloses Tax Advice that they may not rely on it for any purpose without EY's prior written consent.
- **Notice re: Québec.** From time to time, EY personnel performing the Services may include members of the *Ordre des comptables professionnels agréés du Québec* ("**l'Ordre des CPA**"). Any individual member of the *Ordre des CPA* performing professional services hereunder assumes full personal civil liability arising from the practice of his or her profession, regardless of his or her status within EY's organization. He or she may not invoke the liability of EY's organization as a ground for excluding or limiting his or her own liability. The limitations that follow below shall therefore not apply to limit the personal civil liability of members of the *Ordre des CPA* (and with respect to such members, such limitations shall be deemed to not be included in this Agreement).
- The Canadian firm of Ernst & Young LLP ("EY") may assign or novate any of its rights and obligations hereunder to (i) any other member of the Ernst & Young network of firms (each, an "EY Firm") and/or (ii) any entity resulting from, or established as part of, a restructuring, sale or transfer of an EY Firm, in whole or in part, provided further that any such assignment or novation does not materially affect the continuity of the Services. EY shall provide you with notice of any such assignment or novation.
- **Limitation of liability; Indemnity.** EY's total aggregate liability arising out of or relating to this Agreement or the Services, whether in contract or tort (including negligence), under statute or otherwise, shall be limited to the total fees paid to EY for the Services. The preceding limitation will not apply to fraud, wilful misconduct, gross negligence or violation of governing law or to the extent prohibited by applicable law or professional regulations. Client may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or the subcontractors, members, shareholders, directors, officers, partners, principals or employees of EY or of any other EY Firm ("EY Persons"). Client shall make any claim or bring proceedings only against EY. Client agrees to indemnify and hold EY, the other EY Firms and the EY Persons harmless from and against any claims made by third parties related to their use of, or reliance upon, Reports (including Tax Advice). The other EY Firms and all EY Persons shall be entitled to rely on and enforce this paragraph.
- **Confidentiality; Personal information.** EY treats all client information as confidential, subject only to applicable law and professional or regulatory requirements. EY may however provide client information (including personal information) to other EY Firms and our respective service providers in order to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, to provide technology or administrative services, or for quality, risk management or financial accounting purposes. EY, other EY Firms and our respective service providers may process, transfer and store client information (including personal information) outside of Canada. Client is responsible for obtaining any required privacy consents. EY's Canadian privacy policy is available at [www.ey.com/ca](http://www.ey.com/ca).
- **Miscellaneous.** Either party may terminate this Agreement for any reason, upon written notice. Client shall pay EY for time and expenses incurred up to the effective termination date. This Agreement shall be governed by and construed in accordance with British Columbia law, without regard to conflicts of law principles. The parties submit to the exclusive jurisdiction of British Columbia courts in connection with any dispute, claim or other matter arising out of or relating to this Agreement or the Services. Neither party may assign this Agreement. This Agreement may not be modified except in writing. This Agreement constitutes our entire agreement and supersedes all prior representations and agreements (including any confidentiality agreements). Any portion of this Agreement that is found to be invalid, illegal or otherwise unenforceable shall be severed to the minimum extent required and the remainder of the Agreement shall remain in effect. Provisions of this Agreement that by their nature operate beyond the term of this Agreement shall survive any termination and the completion of the Services, including limitations of liability, indemnities and confidentiality.

No. S1710393  
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AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

**AFFIDAVIT #1 OF MICHAEL BELL**

File No.: 228558-0000

Initials: JDW:ay

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