



This is the first affidavit of  
Beatriz Martinez in this case  
and was made on August 6, 2021

No. S-217202  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE BANK OF NOVA SCOTIA

PETITIONER

AND

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL MARINA LTD.,  
ETERNALAND YUHENG INVESTMENT HOLDING LTD., AND 0736657 B.C. LTD.

RESPONDENTS

**AFFIDAVIT**

I, Beatriz Martinez, of the Town of Oakville, in the Province of Ontario, banker, SWEAR THAT:

1. I am a Director – Special Accounts Management at The Bank of Nova Scotia (the “Bank”), the petitioner in this proceeding, and as such I have personal knowledge of the matters deposed to in this affidavit, except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. This affidavit is made in support of the orders sought by the Bank in its petition filed in this proceeding, including an order that Alvarez & Marsal Canada Inc. (“A&M”) be appointed as receiver (the “Receiver”) of the property, assets, and undertakings of Community Marine Concepts Ltd. (“CMC”), Victoria International Marina Ltd. (“Victoria International”), Eternaland Yuheng Investment Holding Ltd. (“Eternaland”), and 0736657 B.C. Ltd. (“073 Corp.” and, together with CMC, Victoria International, and Eternaland, the “Respondents”) pursuant to

section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 39 of the *Law and Equity Act* (British Columbia).

## I. INTRODUCTION

3. The Bank provided CMC with, among other loans and credit facilities, a non-revolving term loan in the principal amount of \$17,080,000 pursuant to the terms of a Commitment Letter dated October 2, 2018 (the “**Commitment Letter**”), which amended and restated an earlier commitment letter dated February 22, 2017 (the “**Initial Commitment Letter**”), to provide bridge financing for CMC’s construction of a luxury yacht center in Victoria Harbour on Vancouver Island known as the Victoria International Marina (the “**Marina**”). Copies of the Commitment Letter and the Initial Commitment Letter are attached to Affidavit #1 of Sandra Brown-John sworn on August 5, 2021 (the “**Brown-John Affidavit**”) as **Exhibits “A” and “B”**, respectively.

4. The Marina and the Respondents’ interests in the Marina Lands, Crown Tenure Leases, Restaurant, and Parking Lease (in each case as defined below) that form part of the Marina’s business operations are collectively referred to in this affidavit as the “**Marina Properties**”.

5. CMC’s obligations to the Bank under the Commitment Letter are guaranteed by Victoria International, Eternaland, and 073 Corp. (together, the “**Corporate Guarantors**”), Hao Ran Zhang and Dong Xia Zhang (together, the “**Personal Guarantors**” and, with the Corporate Guarantors, the “**Guarantors**”). Dong Xia Zhang is a director of each of the Respondents.

6. The Respondents, each of which is a British Columbia corporation, are affiliated entities that to the Bank’s knowledge operate the Marina Properties on an integrated basis. Copies of BC Registry Services company summaries for each of the Respondents are attached to the Brown-John Affidavit as **Exhibit “C”**.

7. To secure the payment of their obligations to the Bank, CMC and the Corporate Guarantors granted to the Bank a comprehensive security package over their respective assets, undertakings, and property, as further described below, including a first-ranking collateral mortgage over lands on which the Marina Properties operate, a mortgage of leasehold interests granted by the governments of Canada and British Columbia required for the operation of the Marina Properties, and general security agreements with respect to the personal property of CMC and each of the Corporate Guarantors.

8. CMC has been in default of its payment obligations under the Commitment Letter since April 2020. As of the date of this affidavit, the amount owing to the Bank under the Commitment Letter is \$15,535,551.45 (not including fees, costs including legal and financial advisor fees, interest, and payment-in-kind interest) (the “**Indebtedness**”).

9. Notwithstanding the Respondents being in default of their payment obligations for approximately fifteen (15) months, the Bank has to date refrained from exercising its contractual rights to enforce its security to allow the Respondents time to restructure their financial affairs and/or sell the Marina Properties in a manner that would allow them to meet their financial obligations.

10. Despite the fifteen (15) month grace period they have been granted by the Bank, plus a prior twelve (12) month extension of the loan maturity date, the Respondents have not refinanced, obtained investment in, and/or sold their interest in the Marina Properties to meet their obligations to the Bank.

11. To the contrary, while they have purported to undertake a sale process with respect to the Marina Properties aimed at paying out the Indebtedness owing to the Bank, the Respondents have recently neglected to pursue an offer from a third-party purchaser that, if accepted, would have provided the Respondents with sufficient funds to satisfy their obligations to the Bank. The Respondents’ decision to not pursue the relevant offer was made notwithstanding that it was in an amount approximately equivalent to the value attributed to the Marina Properties by the Respondents’ own draft third-party appraisal. Given the amount of time that the Bank’s debt has been in default, and the significant amounts currently owing to the Bank, the Respondents’ actions in this regard have been prejudicial to the Bank’s interests.

12. The Bank’s concerns with the Respondents’ conduct are not limited to their recent failure to pursue an offer arising from their own sale process. Over the past fifteen (15) months, in addition to their payment default, the Respondents have failed to follow through on several of their commitments to the Bank, including by neglecting to comply with their obligations to provide the Bank with routine financial information required for the Bank to assess whether its security may be at risk.

13. In the circumstances, the Bank has lost confidence that the Respondents’ management is prepared to work diligently, transparently, and in good faith to satisfy the Respondents’ obligations to the Bank.



14. Further to its contractual entitlement, the Bank seeks the immediate appointment of a receiver over the the assets, undertakings, and property of the Respondents to protect the Bank's secured position, prevent against the potential impairment of the value of the Respondents' property, and assume conduct of the sale process for the Marina Properties in the interest of all affected stakeholders.

## **II. CMC'S BUSINESS AND PROPERTY**

### **A. Business Operations**

15. As per the Marina's website, the Marina is marketed by the Respondents as a full service twenty-eight (28) boat slip facility. Moorage is available on a nightly, monthly, annual, or on a long-term basis.

16. The amenities available at the Marina are marketed by the Respondents as including concierge services, onsite business facilities with multiple boardrooms, an exclusive reception lounge, a crew lounge for yacht staff (complete with a lounge area, gym, theatre wall, and showers, among other amenities), and an oceanfront event space that can accommodate up to 100 guests for a sit-down function or 200 for a stand-up reception.

17. The services offered to yacht patrons are marketed by the Respondents as including transportation services, shore power, water connections, sanitary services, and on-site security. The Marina also offers yacht servicing, detailing, and provisioning, as well as pilotage, captaining services, and a film crew.

18. The Marina property also includes a restaurant that the Bank understands is leased by the Respondents to the owners of "Boom + Batten" (the "**Restaurant**").

19. To the Bank's knowledge, the Respondents currently have two (2) full-time salaried employees, and two (2) part-time salaried employees filling the chief executive officer, director of operations, marketing, and business development roles, plus three (3) administrative and operations employees who are compensated on an hourly basis.

### **B. The Marina Properties**

20. The Marina is located on two (2) parcels of property located on West Song Way, in Victoria BC (legal description: Lot 3, District Lot 119, Esquimalt District, Plan 47008, PID 011-

570-253 and Lot 4, District Lot 119, Esquimalt District, Plan 47008, PID 011-570-270) (the "**Marina Lands**"). The Marina Lands are owned by 073 Corp.

21. Improvements on the Marina Lands consist of twenty-eight (28) boat slips (although the Bank understands that ownership of one slip may have been transferred by way of a long-term lease) and two (2) commercial waterfront buildings, which include the Restaurant and a separate building providing the facilities and services described above.

22. Parking on a daily, weekly, and monthly basis is available at the Marina in forty-eight (48) underground parkade spots, which have been secured pursuant to a 200-year pre-paid lease (the "**Parking Lease**") maturing March 26, 2190 from Pacific National Developments Ltd. 073 Corp. is the lessee under the Parking Lease. The Bank understands that a further forty (40) street stalls were created for Marina clients on Cooperage and Paul Kane Streets.

23. To allow for operation of the Marina, 073 Corp. has also acquired two (2) leases of crown lands – one from the Province of British Columbia (the "**Provincial Crown Tenure Lease**") and one from the Government of Canada (the "**Federal Crown Tenure Lease**", together with the Provincial Crown Tenure Lease, the "**Crown Tenure Leases**").

24. The Provincial Crown Tenure Lease covers a large amount of the water covered land on which the Marina operates. The Federal Crown Tenure Lease covers a smaller strip of land used to secure a float wave attenuator that is part of the Marina's dock structure.

25. The Bank and 073 Corp. have signed "Consent and Non-Disturbance Agreements" (the "**NDAs**") with the Province of British Columbia and the Government of Canada on December 16, 2020 and February 9, 2021, respectively. Copies of the NDAs are attached to the Brown-John Affidavit as **Exhibits "D"** and **"E"**.

26. It is a term of the NDAs that the Province of British Columbia and Government of Canada must each give sixty (60) days' notice to the Bank prior to taking certain actions with respect to the Crown Tenure Leases, including terminating them. The NDAs also contemplate that the Bank may appoint a receiver to dispose of the Respondents' interest in the Crown Tenure Leases. The NDAs specifically provide that if a third party approved by the relevant Crown has not taken over the Respondents' obligations under the NDAs within twenty-four (24) months of a receiver being appointed, then the Province of British Columbia and Government of Canada may seek to cancel the relevant Crown Tenure Leases.

### III. THE BANK LOANS AND SECURITY

#### A. Credit Facilities

27. The Initial Commitment Letter dated February 22, 2017 provided for a non-revolving term loan having an authorized amount of \$14,000,000 repayable in full fifteen (15) months from the date of initial advance, or on demand, whichever came first.

28. The amended and restated Commitment Letter dated October 2, 2018, among other things, increased the authorized amount of the non-revolving term loan from \$14,000,000 to \$17,080,000 with a repayment date of April 30, 2019, or on demand, whichever came first.

29. The following credit facilities (the “**Credit Facilities**”) were made available by the Bank to CMC pursuant to the Commitment Letter:

Credit Number	Purpose of Facility	Description	Authorized Amount
1	To provide bridge construction financing	Non-Revolving Term Loan	\$17,080,000
2	To provide a performance guarantee in favour of the Province of British Columbia with respect to the Marina's redevelopment	Standby Letter of Credit, to expire one year from the date of issuance unless extended	\$100,000
3	Business expenses	Scotiabank VISA Business Card	\$50,000

30. The Bank agreed to extend the April 30, 2019 maturity date of the non-revolving term loan for an initial six (6) month period with a new maturity date of October 31, 2019, and subsequently for a further six (6) month period with a new maturity date of April 30, 2020.

#### B. Security for the Credit Facilities

31. The Corporate Guarantors have each granted unlimited guarantees with respect to CMC's obligations to the Bank under the Commitment Letter (the “**Guarantees**”). Copies of the Guarantees are attached as **Exhibits “F”, “G” and “H”** to the Brown-John Affidavit.



32. To secure their obligations under the Commitment Letter and Guarantees, the Respondents have each also granted the Bank security (the "**Security**") over their assets, undertakings, and property.

33. The Security includes a first-ranking collateral mortgage on the Marina Lands and the Parking Lease pursuant to a Mortgage and Assignment of Rents dated March 8, 2017 (the "**Mortgage**"), a copy of which is attached to the Brown-John Affidavit as **Exhibit "I"**. Also attached as **Exhibit "J"** to the Brown-John Affidavit are the Bank's standard mortgage terms (D. F. Number MT 900105) to which the Mortgage is subject and the acknowledgement of receipt of those terms by CMC and 073 Corp. A copy of the Parking Lease and subsequent mortgage filings with respect to the Parking Lease owing to a transfer of the Parking Lease to 073 Corp. are attached to the Brown-John Affidavit as **Exhibits "K", "L" and "M"**.

34. The Mortgage has been extended to include the Respondents' interest in the Crown Tenures Leases pursuant to two Extensions of Mortgage and Assignment of Rents dated December 18, 2020, copies of which are attached to the Brown-John Affidavit as **Exhibits "N" and "O"** (the "**Extensions of Mortgage**").

35. The Mortgage and the Extension of Mortgage with respect to the Provincial Crown Tenure Lease have been registered with the Land Titles Office. A copy of the Land Title Office, Form B with respect to the Provincial Crown Tenure Lease is attached as **Exhibit "P"** to the Brown-John Affidavit. A copy of a Land Title Office search print showing the registration of the Extension of Mortgage with respect to the Provincial Crown Tenure Lease is attached as **Exhibit "Q"** to the Brown-John Affidavit.

36. Land Titles Office search prints for the Marina Lands are attached as **Exhibit "R"** to the Brown-John Affidavit. As of July 29, 2021, the Bank is the only secured creditor with registrations against the Marina Lands. There are two builders' liens that were filed against the Marina Lands on June 13, 2018 by one party, but no certificates of pending litigation have been filed with respect to these liens.

37. CMC and the Corporate Guarantors have granted general security agreements (the "**GSAs**") to secure their obligations to the Bank under the Commitment Letter and the Guarantees. Copies of the GSAs are attached as **Exhibits "S", "T", "U", and "V"** to the Brown-John Affidavit.

38. The Bank has registered the GSAs granted by CMC and the Corporate Guarantors in the British Columbia Personal Property Registry (the "**PPR**"). PPR search results for each of the Respondents are attached as **Exhibit "W"** to the Brown-John Affidavit.

39. Pursuant to the Commitment Letter, CMC has granted the Bank authority to hold in an account with the Bank (the "**Restrained Payment Account**") funds in the amount of \$1,000,000 for the purpose of servicing interest expenses.

40. The Respondents have also granted the Bank certain other Security, including certificates of insurance, a cost overrun agreement, project completion and debt service guarantee, and an environmental indemnity agreement, as outlined in the Commitment Letter. Also included in the Security granted to the Bank are second-ranking mortgages over two pieces of residential real estate in Burnaby and Vancouver owned by the Personal Guarantors (the "**Residential Properties**").

**C. Credit Card Facility**

41. As set out above, pursuant to the Commitment Letter the Bank also provided CMC with a Scotiabank VISA Business Card facility of up to \$50,000.

**D. "CEBA" Loans**

42. Following the onset of the COVID-19 pandemic in March 2020, CMC and Victoria International were also granted access to "Canadian Emergency Business Account" loans with the Bank, which are unsecured, interest free loans provided to small businesses during the COVID-19 pandemic (the "**CEBA Loans**"). An amount of \$40,000 was provided to each of CMC and Victoria International. Agreements setting out the terms of the CEBA Loans obtained by each of CMC and Victoria International are attached as **Exhibits "X"** and **"Y"** to the Brown-John Affidavit, respectively.

43. The CEBA Loans by their terms are not due to be repaid until December 31, 2022 (or later, if the borrowers do not wish to take advantage of the \$10,000 of loan forgiveness for each CEBA Loan). However, the CEBA Loans become immediately due and payable upon default by CMC and Victoria International under any other agreement or arrangement between them and the Bank.



## V. THE RESPONDENTS' PAYMENT DEFAULT AND FAILURES TO MAKE REQUIRED DISCLOSURES

44. CMC has been in default of its payment obligations under the Commitment Letter since April 30, 2020, when it failed to repay the amount owing under Credit Number 1 (the "**Payment Default**").

45. In the period from April 30, 2020 to the present, the Bank has made numerous efforts to work with CMC and the other Respondents to remedy the Payment Default, and to obtain further information from the Respondents that would allow the Bank to assess whether its Security is in jeopardy.

46. Following CMC's Payment Default in April 2020, on or about July 10, 2020, the Bank proposed to CMC terms for the extension of the maturity of the Credit Facilities in the form of a draft letter (the "**July 10 Letter**"). At CMC's request, the July 10 Letter offered, among other things, to extend the repayment date of the Credit Facilities until such time as the Bank elects to demand repayment. Despite follow-ups by the Bank, CMC neglected to confirm its agreement to the terms set out in the July 10 Letter, despite verbal representations that it would do so. No reason was provided by the Respondents for not agreeing to the terms of the July 10 Letter intended to give effect to the payment extension that the Respondents had requested. A copy of the July 10 Letter is attached as **Exhibit "Z"** to the Brown-John Affidavit.

47. On August 21, 2020, counsel for the Bank wrote to CMC to provide further notice of CMC's Payment Default under the Commitment Letter (the "**August 21 Letter**"), and also listed other ongoing failures of CMC to comply with information requests made by the Bank in accordance with the Commitment Letter (the "**Information Defaults**"). In the August 21 Letter, counsel for the Bank stated that if CMC did not make progress with respect to its obligations under the Commitment Letter, and the proposed terms set out in the July 10 Letter, the Bank would be compelled to consider enforcement proceedings against the Respondents. A copy of the August 21 Letter is attached as **Exhibit "AA"** to the Brown-John Affidavit.

48. Following delivery of the August 21 Letter, CMC and the Bank worked to negotiate a forbearance agreement (the "**Forbearance Agreement**"). Pursuant to the terms of the proposed Forbearance Agreement, the Bank would agree to forbear from exercising its rights pursuant to the Commitment Letter and the Security until January 31, 2021 (subject to certain rights to terminate the Forbearance Agreement). In exchange, CMC and the Guarantors would agree to

certain commitments and milestones to complete the sale of their interests in the Marina Properties and Residential Properties.

49. On or about October 27, 2020, the Forbearance Agreement was executed by CMC and each of the Guarantors. Subsequently, 073 Corp. also executed the Extensions of Mortgage on December 18, 2020 (with respect to the Provincial Crown Tenure Lease and the Federal Crown Tenure Lease). A copy of the signed Forbearance Agreement is attached as **Exhibit "BB"** to the Brown-John Affidavit.

50. However, notwithstanding their having returned a signed Forbearance Agreement to the Bank, the Respondents failed to provide the Bank required confirmation of the corporate authority of each of the Respondents to execute, deliver, and perform its obligations under the Forbearance Agreement. For this reason, the forbearance terms negotiated in good faith by the Bank did not become effective and the Respondents remained in default of their obligations under the Commitment Letter. As with their failure to confirm their agreement to the terms of the July 10 Letter, no reason was provided by the Respondents for not complying with the requirements of execution of a Forbearance Agreement that the Bank had negotiated in good faith over the course of several weeks. The Respondents also failed to comply with most of the reporting requirements to which they indicated their agreement when they signed the Forbearance Agreement.

51. On March 8, 2021, counsel for the Bank again wrote to CMC and the Guarantors to confirm the Respondents' ongoing Payment Default, among other delinquencies under the Commitment Letter (the "**March 8 Default Letter**"). The defaults set out in the March 8 Default Letter included:

- (a) the Payment Default;
- (b) a failure to maintain a minimum balance of \$1,000,000 in the Restrained Payment Account;
- (c) a failure to maintain the title to the Marina Lands and the Residential Properties free and clear of all encumbrances (other than those permitted by the Security) and
- (d) various Information Defaults, including:

- (i) failure to deliver to the Bank notice to reader annual financial statements of Eternaland and 073 Corp. for the 2018 and 2019 fiscal years;
- (ii) failure to deliver to the Bank review engagement audited financial statements of CMC for the fiscal year ending March 31, 2020;
- (iii) failure to deliver to the Bank notice to reader financial statements of Victoria International for the fiscal year ending March 31, 2020; and
- (iv) failure to deliver to the Bank a quarterly sublease report within 30 days of June 30, September 30, and December 31, 2020 with respect to each moorage slip leased for a 40-year term.

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

52. A copy of the March 8 Default Letter is attached as **Exhibit "CC"** to the Brown-John Affidavit.

53. Given the ongoing Defaults, counsel to the Bank also wrote to the Respondents on March 8, 2021 (the "**March 8 Request Letter**") to request that the Respondents agree to:

- (a) the Bank retaining A&M as financial advisor to the Bank by no later than March 11, 2021;
- (b) replenish the Restrained Payment Account so that it has a minimum balance of \$1,000,000 by no later than March 15, 2021;
- (c) provide to the Bank by no later than March 15, 2021 a written update with respect to the steps taken to sell their interest in the Marina Properties and the Residential Properties; and
- (d) deliver to the Bank by no later than March 15, 2021 updated insurance certificates for the Marina Properties and the Residential Properties.

54. A copy the Bank's March 8 Request Letter is attached as **Exhibit "DD"** to the Brown-John Affidavit.



55. On March 9, 2021, the Bank wrote to CMC to advise that it had terminated the Scotiabank VISA Business Card agreement provided to CMC as Credit 3 under the Commitment Letter. A copy of this correspondence is attached as Exhibit “EE” to the Brown-John Affidavit.

56. By the March 11, 2021 and March 15, 2021 deadlines set by the Bank for the Respondents to agree to the appointment of a financial advisor and to replenish the Restrained Payment Account (among other demands), the Respondents had not complied with the demands outlined in the March 8 Request Letter.

57. On March 22, 2021, counsel for the Bank again wrote to CMC and the Guarantors with respect to the Defaults (the “**March 22 Demand Letter**”). In the March 22 Demand Letter, the Bank provided notice to the Respondents pursuant to the Commitment Letter that the amount of \$15,803,090.65 (plus all accrued and accruing interest, fees, indemnity, and other amounts owing to the Bank) was immediately due and payable to the Bank, that the Security held by the Bank was immediately enforceable, and the obligation of the Bank to make further advances under the Commitment Letter was terminated. A copy of the March 22 Demand Letter is attached as **Exhibit “FF”** to the Brown-John Affidavit. Enclosed with the March 22 Demand Letter were section 244 notices of intention to enforce security provided pursuant to the BIA, which are also included at Exhibit “FF” to the Brown-John Affidavit.

58. On March 24, 2021, counsel for the Bank wrote to CMC and Victoria International and demanded repayment of the CEBA Loans due to the defaults of CMC under the Commitment Letter. Copies of this correspondence are attached as **Exhibits “GG”** and “**HH**” to the Brown-John Affidavit.

59. On April 12, 2021, a month after it had been requested to be returned, the Respondents finally did return to the Bank a countersigned copy of the engagement letter setting out the terms upon which A&M would be appointed as financial advisor (the “**Financial Advisor**”) to the Bank. A copy of the countersigned Financial Advisor engagement letter, which was signed by the Respondents and the Personal Guarantors, is attached as **Exhibit “II”** to the Brown-John Affidavit (the “**Financial Advisor Agreement**”).

60. On May 17, 2021, after further efforts by the Bank and the Financial Advisor to work cooperatively with the Respondents, counsel for the Bank again wrote to the Respondents to provide further notice of the continuing Defaults, including the Payment Default (the “**May 17 Default Letter**”). In its letter, counsel to the Bank advised that since the Respondents’ consent to

the appointment of the Financial Advisor, and deposit of some additional funds into the Restrained Payment Account, the Respondents and Guarantors have, among other things, failed to: (a) cooperate with the Financial Advisor; (b) make meaningful progress on the proposed sale of the Marina Properties and the Residential Properties; (c) maintain the Restrained Payment Account at the minimum \$1 million balance; and (d) remedy the other Defaults.

61. In a further effort to work with the Respondents, the Bank at this time advised the Respondents that it required them to:

- (a) cooperate immediately with all inquiries from the Financial Advisor fairly, fully, and to the best of their ability, and to provide all information requests that have and may be requested with respect to the affairs of the Respondents and Guarantors;
- (b) by no later than May 21, 2021, provide the Bank with written evidence confirming purported interest in the Marina Properties by a Hong Kong-based investor and other information detailing the Respondents' efforts to sell the Marina Properties;
- (c) by no later than May 21, 2021, replenish the Restrained Payment Account so that such account has a minimum balance of \$1 million as required by the Commitment Letter; and
- (d) by no later than May 21, 2021, provide the Bank with a written update from the respective realtors representing the Respondents and Personal Guarantors on the status of the sale and marketing efforts of the (i) Marina Properties and (ii) Residential Properties.

62. A copy of the May 17 Default Letter is attached as **Exhibit "JJ"** to the Brown-John Affidavit.

63. In addition to the above correspondence, representatives of the Bank have attempted to schedule regular conference calls with representatives of the Respondents to obtain status updates on the sale of the Marina Properties and Residential Properties, among other matters. On behalf of the Bank, these calls were attended by me, Justin Mitges, Director, Special Accounts Management, and at times other representatives of the Bank. On behalf of the Respondents, the calls were attended by Mr. Eric Li, the Director, Business and Lifestyle Innovation at the Marina, and the agent of the Respondents in their dealings with the Bank.



64. In the period from October 2020 to July 2021, more than twenty (20) calls took place between the Bank and Mr. Li regarding this matter, with at least ten (10) additional pre-scheduled calls not taking place due to Mr. Li either not attending the scheduled call without notice or providing short notice of his lack of availability.

65. In its scheduled calls with Mr. Li, and in extensive related email correspondence, the Bank consistently requested that the Respondents remedy the Defaults set out in the correspondence noted above, provide the information being requested by the Bank and Financial Advisor, and cooperate with the Financial Advisor. The Bank's efforts to engage with the Respondents in this manner have not been successful, as confirmed by the ongoing Defaults.

66. In addition to the Bank's efforts to deal directly with the Respondents, since April 12, 2021, A&M as Financial Advisor has made efforts to obtain financial information on the Respondents' business pursuant to its mandate under the Financial Advisor Agreement. While the Respondents have provided some piecemeal information in response to the Financial Advisor's requests, as they had previously done with respect to the Bank's requests, most information requests have not been fully responded to. A copy of the Financial Advisor's Preliminary Information Request List showing the status of the Financial Advisor's information requests is attached as **Exhibit "KK"** to the Brown-John Affidavit.

67. The Respondents' failure to be fully responsive and transparent with respect to the Bank's and the Financial Advisor's information requests is very concerning to the Bank. The Respondents expressly committed to provide such information in the Commitment Letter, in the Forbearance Agreement they negotiated with the Bank and signed, and again in the Financial Advisor Agreement. The requested information is of a routine nature, should be readily available to the Respondents, and is necessary for the Bank to assess whether its security is at risk of impairment.

## **VI. UNSUCCESSFUL SALE EFFORTS**

68. It was an agreed upon term of the Forbearance Agreement (executed by the Respondents but not effective due to their lack of compliance with formalities) that the Respondents would receive a deposit in connection with a private sale of the Marina Properties by October 22, 2020 on terms acceptable to the Bank, failing which the Respondent would list the Marina Properties with a licensed realtor by October 30, 2020.



69. The Respondents did not receive the deposit or list the properties as they had agreed to when negotiating and executing the Forbearance Agreement. However, in about October 2020, Mr. Li advised the Bank that the Respondents were in discussions with a Hong Kong-based investor (the "**Purported HK Investor**") interested in acquiring the Marina Properties.

70. By late November 2020, Mr. Li advised the Bank that the Respondents were "getting close" to a deal with the Purported HK Investor and could have a deal in a very short period of time. Over the next several months, Mr. Li advised the Bank that the Respondents were still working to reach an agreement with the Purported HK Investor and that several meetings had been held to this end. In subsequent months, Mr. Li continued to periodically update the Bank about the status of the Respondents' discussions with the Purported HK Investor, including by advising the Bank that such discussions were progressing towards a transaction.

71. On or about December 4, 2020, 073 Corp. executed an exclusive listing agreement (the "**Listing Agreement**") with CBRE Limited ("**CBRE**") for the sale of the Marina Properties. A copy of CBRE's Listing Agreement redacted for confidentiality is attached as **Exhibit "LL"** to the Brown-John Affidavit. An unredacted copy of CBRE's Listing Agreement is attached as **Exhibit "G"** to Confidential Affidavit #2 of Sandra Brown-John sworn on August 5, 2021 (the "**Confidential Brown-John Affidavit**"). A copy of the marketing brochure created for the Marina by CBRE is attached as **Exhibit "MM"** to the Brown-John Affidavit.

72. In a progress report dated March 19, 2021, CBRE advised Mr. Li that CBRE's marketing campaign was targeting 1,680 qualified prospects selected from CBRE's extensive database of local and global investors. As of March 19, 2021, CBRE advised that it had obtained signed confidentiality agreements from seventeen (17) separate parties with an interest in acquiring the Marina Properties. A copy of CBRE's March 19, 2021 progress report (the "**CBRE Progress Report**") redacted for confidentiality is attached as **Exhibit "NN"** to the Confidential Brown-John Affidavit. An unredacted copy of the Progress Report is attached as **Exhibit "A"** to Confidential Brown-John Affidavit.

73. While some investors appear to have expressed an interest in acquiring only the Restaurant, the Bank understands that CBRE's recommendation was for the Respondents to market the Marina Properties as a whole, rather than separately as the Restaurant, the Marina Lands, etc. A copy of an email dated April 9, 2021 from CBRE setting out CBRE's recommendation in this regard redacted for confidentiality is attached as **Exhibit "PP"** (page 4)

to the Brown-John Affidavit. An unredacted copy of the email is attached as **Exhibit "C"** Confidential Brown-John Affidavit.

74. The CBRE sale process resulted in, among other expressions of interest, a letter of intent (the "**Offer**") dated May 27, 2021 from a third-party (who was not the Purported HK Investor) to acquire the Marina Properties for a purchase price that was in the range of the amount at which the Marina Properties were appraised by a draft appraisal commissioned by CMC and dated December 20, 2019. The Bank understands that the prospective purchaser communicated to CBRE a willingness to increase the Offer, and to close the transaction quickly. The Respondents elected not to pursue the Offer.

75. A copy of the Offer and an email from Carter Kerzner of CBRE documenting the willingness of the proposed purchaser to increase the Offer amount that have been redacted for confidentiality are attached as **Exhibits "OO"**, and "**PP**" to the Brown-John Affidavit. Unredacted copies of the Offer and Mr. Kerzner's email are attached as **Exhibits "B"** and "**C**" to the Confidential Brown-John Affidavit. Copies of the draft appraisal report dated December 20, 2019 (the "**Draft 2019 Appraisal**") prepared for CMC by Burgess Cawley Sullivan & Associated Ltd., and an appraisal report dated January 31, 2017 prepared by Burgess Cawley Sullivan & Associated Ltd. are attached as **Exhibits "D"** and "**E**" to the Confidential Brown-John Affidavit. The Bank has not been provided with a finalized version of the Draft 2019 Appraisal despite numerous requests.

76. Throughout the CBRE marketing process, Mr. Li advised the Bank on several occasions that the Respondents were also still in active discussions with the Purported HK Investor. It is not clear to the Bank whether CBRE had any involvement in the discussions with the Purported HK Investor, but based on discussions with Mr. Li, it appears that discussions with the Purported HK Investor were taking place among Mr. Li, the Respondents, and the Purported HK Investor only.

77. On June 1, 2021, nearly eight (8) months after the commencement of negotiations with the Purported HK Investor, Mr. Li wrote a letter to the Bank in which he advised the Bank of, among other things, the identity on the Purported HK Investor. In his letter, Mr. Li advised that the Purported HK Investor "is working to form a new mother company" and that "as soon as that is done a Vancouver company will be form[ed] to process the sale." Mr. Li further advised that "we are working on finalizing the contract as well" and that a "[c]losing timeline and other terms and

conditions will be deliver[ed] as soon as both part[ies] have an agreement.” A copy of Mr. Li’s June 1, 2021 letter with the name of the Purported HK Investor redacted for confidentiality is attached as **Exhibit “TT”** to the Brown-John Affidavit. An unredacted copy of this letter is attached as **Exhibit “F”** to the Confidential Brown-John Affidavit.

78. On or around June 23, 2021, the Bank became aware of the Respondents’ decision to pursue a sale of the building in which the Restaurant operates separately from the other Marina Properties. In other words, the Bank understood as of about June 23, 2021, which was more than six (6) months after the Respondents commenced a sale process with respect to the Marina Properties as a whole, that the Respondents wished to proceed with a revised sale strategy, where they would sell the Restaurant building separately from the other building and lands comprising the Marina Properties.

79. Subsequently, the Bank has learned from an undated publicly available brochure prepared by CBRE that the Respondents may be attempting to sell two buildings located on the Marina Properties (but not the Marina). The relevant brochure lists the building that is used to provide amenities and services to the Marina’s clients for \$8.9 million with a lease-back arrangement being possible, and the building in which the Restaurant operates for \$9.9 million. A copy of CBRE’s brochure listing the two buildings for sale is attached as **Exhibit “QQ”** to the Brown-John Affidavit.

80. The Respondents’ apparent approach of attempting to sell the two buildings separately from the other Marina Properties appears to the Bank to be inconsistent with the Respondents’ apparently ongoing negotiations with the Purported HK Investor, which the Bank has been led to believe to involve the sale of the Marina Properties as a whole.

81. The Bank has no reason to believe that pursuing this alternate strategy will allow the Respondents to meet their obligations to the Bank. The Bank has not been provided with any appraisal information with respect to the proposed sale of buildings apart from the other Marina Properties. The Bank is also not presently aware of whether the Respondents renewed CBRE’s Listing Agreement which was scheduled to expire on June 30, 2021. The Bank has not received or been provided with any correspondence from CBRE regarding this matter since June 23, 2021 and, despite numerous requests, Mr. Li has not provided any substantive confirmation on the status of CBRE’s engagement and any ongoing marketing and sale efforts. The marketing



brochure relating to the listing of the two buildings owned by the Respondents was located through publicly available information and was not provided directly by the Respondents.

82. On or around July 20, 2021, Mr. Li indicated to the Bank that the Respondents may be pursuing a refinancing of the Marina Properties to be completed by August 30, 2021. The Bank does not have information to suggest that such a refinancing is being diligently pursued by the Respondents. Based on its efforts to obtain routine information from the Respondents regarding their financial status over approximately fifteen (15) months, the Bank does not have confidence that any proposed refinancing pursued by the Respondents will succeed on a timely basis if at all.

83. On or around July 20, 2021, Mr. Li provided his most recent update to the Bank on the status of the Respondents' discussions with the Purported HK Investor. This update was provided approximately one (1) month after Mr. Li advised the Bank that discussions with the Purported HK Investor were stalled on account of the Purported HK Investor being sick. As of this update, the Bank is not aware of any tangible progress having been made to advance a potential sale transaction with the Purported HK Investor between November 2020, when Mr. Li advised that discussions with the Purported HK Investor were "getting close" to a deal, and July 2021.

84. Specifically, the Bank has to date not been provided with full responses to its request on May 17, 2021 that the Respondents provide (a) written information confirming the Purported HK Investor's interest in the Marina Properties; (b) written information confirming the Purported HK Investor's willingness and ability to close a transaction for the purchase of the Marina Properties; and (c) the specific terms and conditions on which the Respondents are negotiating the sale of the Marina Properties (including any draft letter of interest) with the Purported HK Investor.

85. The Respondents' Personal Guarantors have also to the Bank's knowledge made no tangible progress in selling the Residential Properties against which the Bank has registered second-ranking mortgages as security for the Personal Guarantors' obligations. The Residential Properties, which have 2021 assessed values of \$8,215,000 and \$4,686,000, were agreed in the proposed Forbearance Agreement signed by the Respondents and Guarantors to be listed for sale by October 22, 2020. Notwithstanding recent news reports that the Vancouver luxury real estate market is "on fire" and "surging", the Personal Guarantors have not sold the Residential Properties. The Bank does not have confidence that the Personal Guarantors are diligently working to sell the Residential Properties as they indicated they would when negotiating the

Forbearance Agreement. Attached as **Exhibit "RR"** to the Brown-John Affidavit is a July 13, 2021 Global News article titled "Canada's luxury real estate market is on fire. Can the foreign homebuyers' tax cool it?" Attached as **Exhibit "SS"** to the Brown-John Affidavit is a July 15, 2021 Georgia Straight news article titled "Vancouver real estate: Sotheby's reports surging sales of luxury homes amid strong "local and global confidence". Copies of British Columbia Tax Assessment Roll Reports for the Residential Properties are attached as Exhibit **"UU"** to the Brown-John Affidavit.

## **VII. THE NEED FOR A COURT-APPOINTED RECEIVER**

86. The Respondents have failed to repay the Indebtedness to the Bank as required under the Commitment Letter. Notwithstanding the fifteen (15) month grace period granted by the Bank, which was preceded by a twelve (12) month extension to the maturity date of the Credit Facilities, the Respondents have not found a solution to their financial problems.

87. Over a period of approximately fifteen (15) months, the Bank has made efforts to engage directly with the Respondents and provided them with ample opportunity to restructure their financial affairs in a manner that would allow them to meet their obligations to the Bank. However, during this grace period the Respondents have only managed to reduce their liability to the Bank from the \$17,080,000 initially due by April 30, 2019 (the maturity date of the Credit Facilities prior to the twelve (12) month extension of the term to April 30, 2020) to the \$15,535,551.45 Indebtedness that is presently owing to the Bank (excluding fees, costs including legal and financial advisor fees, interest, and payment-in-kind interest).

88. While the Respondents have also made periodic payments towards the Restrained Payment Account on March 30, 2021, April 1, 2021, May 25, 2021, and June 10, 2021, the Restrained Payment Account is currently below the required \$1 million threshold because of accruing interest and monthly payments towards the Indebtedness.

89. In addition to their long-standing Payment Default, the Respondents have in the Bank's view also not been (a) fully forthcoming in providing the Bank with required documentation and information about the status of their business and financial affairs, or (b) acting diligently to sell the Marina Properties.

90. Specifically, the Respondents' conduct in, among other things: (a) not providing to the Bank required information to make the Forbearance Agreement negotiated with the Bank



effective; (b) not fully remedying the Information Defaults despite ample opportunity; (c) not fully addressing the information requests of the Financial Advisor; and (d) not pursuing the Offer, have led the Bank to lose all confidence in the Respondents' willingness to work diligently, transparently, and in good faith to satisfy their obligations to the Bank. Similarly, the Personal Guarantors' failure to diligently pursue the sale of the Residential Properties as they indicated they would agree to do in signing the Forbearance Agreement has made the Bank lose confidence in them.

91. The Bank has determined that it now needs to take steps to enforce its Security through the appointment of a receiver, a contractual right that the Bank negotiated when executing the Commitment Letter and obtaining security in the form of the Mortgage and each of the GSAs granted by the Respondents. The Bank is of the view that such action is necessary to protect and preserve the value of its Security. In particular, the integrated nature of the Respondents' business, and the nature of the Marina Properties, which include the operation of a business on private as well as federal and provincial lands, requires the Receiver to be appointed over each of the Respondents' assets, undertakings, and properties (over which the Bank has Security) to ensure that the status quo of the Respondents' business is preserved during the enforcement process.

92. In the Bank's view, the appointment of the Receiver with the powers to require access to the Respondents' business and financial information is necessary to obtain an accurate picture of the Respondents' business, its value, and available options for realization. Additionally, it is the Bank's position that it is necessary and expedient that the Marina Properties be sold. The Bank accordingly requests that, upon appointment, the Receiver have the powers necessary to pursue a transparent, orderly, and timely sale process for the Marina Properties under the supervision of this Court.

#### **VIII. SEALING OF CONFIDENTIAL AFFIDAVIT**

93. The information contained in the Exhibits to the Confidential Brown-John Affidavit is commercially sensitive and confidential. Disclosure of the Offer, the appraisals of the Marina Properties, and the identity of potentially interested parties who may subsequently be bidders in any sale process run by the Receiver could have a potentially negative impact on any future sale process, to the detriment of the Respondents, the Bank, other interested parties, and the integrity of Court-supervised sale processes generally. In contrast, I am not aware of any prejudice that




would be caused by keeping the requested information confidential. The Bank therefore asks for an order sealing the Confidential Brown-John Affidavit on the court file.

## IX. CONCLUSION

94. The Bank has given CMC and the other Respondents well over a year since the April 30, 2020 Payment Default to repay the amounts owing under the Commitment Letter and to pursue options for restructuring their financial affairs. The Bank's indulgence of the Respondents was preceded by a prior twelve (12) month extension to the maturity date of the Credit Facilities at issue in this action. At this stage, the Bank has lost confidence in the Respondents' ability to either meet their obligations to the Bank or to diligently pursue a commercially reasonable sale of the Marina Properties. The Bank is of the view that the appointment of a Receiver is just and convenient in the circumstances.

SWORN BEFORE ME at Mississauga,  
Ontario on August 6, 2021

  
A Commissioner for taking Affidavits for  
British Columbia

  
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