

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

AUG 06 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

PETITION TO THE COURT

ON NOTICE TO:

Community Marine Concepts Ltd.
2959 Kingsway
Vancouver, BC V5R 5J4

Victoria International Marina Ltd.
2959 Kingsway
Vancouver, BC V5R 5J4

Eternaland Yuheng Investment Holding Ltd.
2959 Kingsway
Vancouver, BC V5R 5J4

0736657 B.C. Ltd.
2959 Kingsway
Vancouver, BC V5R 5J4

This proceeding is brought for the relief set out in Part 1 below by The Bank of Nova Scotia.

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

Time for Response To Petition

A Response to Petition must be filed and served on the Petitioner,

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

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

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

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

(1)	The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioner is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Peter Bychawski
	E-mail address for service of the Petitioner: Vancouver.service@blakes.com and peter.bychawski@blakes.com
(3)	The name and office address of the Petitioner's lawyer is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Peter Bychawski

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. An order (the "**Receivership Order**") substantially in the form attached as **Schedule "A"** appointing Alvarez & Marsal Canada Inc. ("**A&M**") as 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**").

2. Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

Introduction

2. The Bank of Nova Scotia (the “**Bank**”) provided CMC with, among with 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**”) 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**”).

3. The Bank is the primary secured lender to the Respondents and holds a first ranking charge over all the Respondents’ property, assets, and undertakings including the lands and buildings utilized in the operation of the Marina (together, the “**Marina Properties**”).

4. The Respondents have been in default of their payment obligations under the Commitment Letter for fifteen (15) months (the “**Payment Default**”).

5. The Bank has provided the Respondents with ample opportunity to restructure their financial affairs in a manner that would allow them to meet their obligations to the Bank.

6. Notwithstanding the grace period provided to them by the Bank, the Respondents remain indebted to the Bank under the Commitment Letter for \$15,535,551.45 (excluding fees, costs including legal and financial advisor fees, interest, and payment-in-kind interest). CMC and Victoria International are each separately indebted to the Bank for \$40,000 for Canadian Emergency Business Account loans that became due and payable on March 24, 2021.

8. In addition to their long-standing Payment Default, and contrary to their representations and assurances to the Bank, the Respondents have not been (a) fully forthcoming in providing the Bank with routine financial information required for the Bank to assess whether its security may be at risk, or (b) acting diligently to sell the Marina Properties as they have undertaken to do.

9. Having refrained from the exercise of its contractual rights to appoint a receiver for fifteen (15) months 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, the

Bank has determined that it now needs to take steps to enforce its security through the appointment of a receiver.

The Marina

10. The Marina, which is operated by the Respondents on an integrated basis, is located on two (2) parcels of property owned by 073 Corp. 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**").

11. Improvements on the Marina Lands consist of twenty-eight (28) boat slips and two (2) commercial waterfront buildings, one of which includes a restaurant that is leased by the Respondents to the owners of "Boom + Batten" (the "**Restaurant**") and the second of which provides amenities to Marina customers.

12. 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), an oceanfront event space that can accommodate up to 100 guests for a sit-down function or 200 for a stand-up reception, and access to underground and street side parking.

13. 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.

14. 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**").

15. 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.

The Credit Facilities

16. 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

17. The Bank agreed to extend the April 30, 2019 maturity date of Credit 1 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.

Security for the Credit Facilities

18. The three Respondents other than CMC, Victoria International, Eternaland, and 073 Corp., have each granted unlimited guarantees with respect to CMC's obligations to the Bank under the Commitment Letter (the “**Guarantees**”).

19. 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.

20. The Security includes, among other things, a first-ranking collateral mortgage on the Marina Lands (the “**Mortgage**”).

21. 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 (the "**Extensions of Mortgage**").

22. The Bank and 073 Corp. have signed "Consent and Non-Disturbance Agreements" (the "**NDAs**") with respect to each of the Crown Tenure Leases with each of the Province of British Columbia and the Government of Canada.

23. 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

24. CMC and the Corporate Guarantors have further granted general security agreements (the "**GSAs**") to secure their obligations to the Bank under the Commitment Letter and the Guarantees.

25. CMC has also granted the Bank authority to hold in an account with the Bank (the "**Restrained Payment Account**") funds in the amount of \$1,000,000.

26. 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.

The Respondents' Default

27. CMC has been in default of its payment obligations under the Commitment Letter since the occurrence of the Payment Default on April 30, 2020, when CMC failed to repay the amount owing under Credit Number 1.

28. 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.

29. The Bank's efforts to engage with the Respondents, which included the negotiation of a forbearance agreement that the Respondents signed on October 27, 2020 but which did not become effective due to the failure of the Respondents to provide certain documentation (the "**Forbearance Agreement**"), have not been successful.

30. In addition to their long-standing Payment Default, the Respondents have 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.

31. Specifically, the Respondents' conduct in, among other things:

- (a) not providing to the Bank required information to make the Forbearance Agreement negotiated by the Bank in good faith effective;
- (b) not fully remedying numerous information defaults despite ample opportunity;
- (c) not fully addressing the information requests of the Bank and its financial advisor engaged with the Respondents' consent despite agreeing to cooperate with the financial advisor and to provide such information; and
- (d) not diligently pursuing commercially reasonable sale opportunities for the Marina Properties,

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.

32. In the circumstances, the Bank has determined that the appointment of the Receiver is necessary to (a) gain access to the Respondents' business and financial information to assess whether the Bank's security is in jeopardy, (b) obtain an accurate picture of the Respondents' business, and (c) pursue and implement a transparent, orderly, and timely sale process for the Marina Properties under the supervision of this Court.

33. The Bank has delivered to the Respondents notices of intention to enforce security dated March 22, 2021 as required by section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “BIA”).

Part 3: LEGAL BASIS

Jurisdiction to Grant the Requested Relief

34. The jurisdiction to of this Court to grant the Receivership Order is found in subsection 39(1) of the *Law and Equity Act* R.S.B.C. 1996, c. 253 and section 243 of the BIA, among other statutes.

The Test for Appointing a Receiver

35. Subsection 39(1) of the *Law and Equity Act* allows for the appointment of a receiver where it is “just or convenient” to do so.

36. Section 243 of the BIA provides that this Court may appoint a receiver to do any or all of the following if it considers it to be “just or convenient” to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

37. This Court has held that:

A mortgagee is entitled to the appointment of a Receiver or Receiver Manager as a matter of course when the mortgage is in default. The Court should only exercise its discretion not to make such an appointment in those rare occasions where a mortgagor or subsequent charge holder can show compelling commercial or other reason why such an order ought not to be made. The onus will always be on the mortgagor or subsequent charge holder in that regard.

***United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 at para. 17. See also *Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.* 2012 BCSC 437 at para. 16.**

38. While this Court has held that a mortgagee is entitled to the appointment of a receiver as a matter of course when the mortgage is in default, it also has exercised the jurisdiction to consider an application to appoint a receiver holistically to decide whether on the whole of the circumstances it is, in fact, just or convenient to appoint a receiver.

***Bank of Montreal v. Gian's Business Centre Inc.*, 2016 BCSC 2348 at paras. 22 - 23.**

39. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a holistic determination of whether it is "just and convenient" to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;

- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties;
- (p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 25.

40. In applying these factors, this Court has held that the right of a secured creditor to apply for a receiver under a security agreement holds considerable weight and is a “strong factor” in support of a petition.

Maple Trade, at para. 26.

It is Just and Convenient to Appoint a Receiver in the Circumstances

41. In the present case, the Bank should be entitled to the appointment of a receiver over the property, assets, and undertakings of the Respondents as a matter of course. The Mortgage and GSAs signed by the Respondents have been in default for fifteen (15) months. The Respondents have each provided an express covenant agreeing to the appointment of a receiver in the event of default. This Court has held that it should not ordinarily interfere with a contract between the parties. There are no compelling commercial or other reason why the Receivership Order ought not to be made.

42. In addition, it is just and convenient in the present circumstances to appoint a receiver over the Respondents' assets, undertakings, and property on the terms sought by the Bank for, among others, the following reasons:

- (a) the Respondents are indebted to the Bank for approximately \$15.5 million and have defaulted on their obligations to the Bank under the Commitment Letter, Mortgage, the GSAs, and other related agreements;

- (b) the Bank has given the Respondents fifteen (15) months to restructure their financial affairs in a manner that would allow them to meet their obligations to the Bank. This grace period was preceded by a prior twelve (12) month extension to the maturity date of the Respondents' loan obligations;
- (c) the Bank has lost confidence in the Respondents' willingness to work diligently, transparently, and in good faith to satisfy their obligations to the Bank;
- (d) the Mortgage and the GSAs signed by each of the Respondents grant the Bank the contractual right to appoint a receiver with the powers sought in the Receivership Order. The NDAs similarly contemplated the appointment of a receiver and the disposition of the Crown Lease Tenures;
- (e) it is necessary and expedient that the Marina Properties be sold and that any marketing and sale process with respect to the Marina Properties be transparent, orderly, timely, and undertaken under the supervision of this Court;
- (f) 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 and sale process;
- (g) 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, to protect the Bank's security interest, limit its losses, and prevent further dissipation of the Respondents' assets;
- (h) the appointment of a receiver will protect the interests of all stakeholders;
- (i) the balance of convenience favours the appointment of a receiver in these circumstances.

43. For the above reasons, the Bank submits that it is just and convenient that this Court appoint A&M as receiver of all the Respondents' assets, undertakings, and property on the terms set out in the proposed Receivership Order.

44. The Bank further relies on Rules 10-2 (Receivers) and 13-5 (Sales by Court) of the *Supreme Court Civil Rules*, BC Reg 168/2009.

Sealing Order

45. The considerations involved in the granting of a sealing order require that the person asking a court to exercise discretion in a way that limits the open court presumption establish that: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 37 – 38;
Ontario Securities Commission v. Bridging Finance Inc., 2021
ONSC 4347 at paras. 23 – 27.**

46. In the present case, the three prerequisites for sealing the Exhibits to Confidential Affidavit #2 of Sandra Brown-John dated August 5, 2021 (the "**Confidential Affidavit**") are satisfied.

47. The disclosure of the information in the Exhibits to Confidential Affidavit would have a potentially negative impact on any future sale process undertaken by the Receiver and undermine the Receiver's efforts to maximize value for stakeholders, to the detriment of the Respondents, the Bank, other interested parties, and the integrity of Court-supervised sale processes generally.

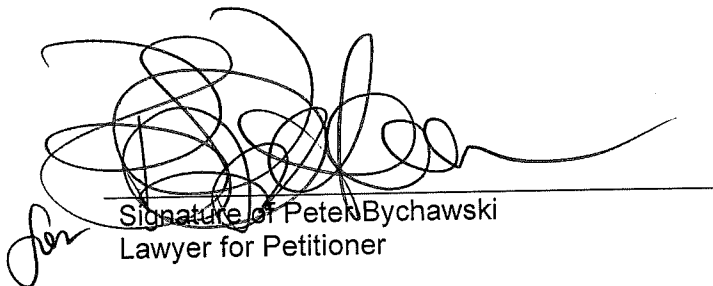
48. There is a public interest in ensuring the integrity of any sale process that may be undertaken by the Receiver. There is no reasonable alternative measure to preserve the integrity of any future sale process other than sealing the Confidential Affidavit. No stakeholders will be materially prejudiced by sealing the Confidential Affidavit. As a matter of proportionality, the salutary effects of granting a sealing order outweigh any deleterious effects.

Part 4: MATERIALS TO BE RELIED ON

- 49. Affidavit #1 of Beatriz Martinez, sworn on August 6, 2021;
- 50. Affidavit #1 of Sandra Brown-John, sworn on August 5, 2021;
- 51. Confidential Affidavit #2 of Sandra Brown-John, sworn on August 5, 2021; and
- 52. Such other materials as counsel may advise and this Court allows.

The Petitioner estimates that the hearing of the Petition will take one hour.

Date: August 6, 2021


Signature of Peter Bychawski
Lawyer for Petitioner

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this petition

☐ with the following variations and additional terms:

.....
.....
.....

Date:[dd/mm/yyyy].....

.....
Signature of ☐ Judge ☐ Master

SCHEDULE "A"

No. _____
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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

JUSTICE _____

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_____, 2021

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as Receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd., and 0736657 B.C. Ltd. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING Affidavit #1 of Beatriz Martinez sworn August 6, 2021, Affidavit #1 of Sandra Brown-John, sworn August 5, 2021, and Confidential Affidavit #2 of Sandra Brown-John, sworn August 5, 2021, and the consent of A&M to act as the Receiver; AND ON HEARING Peter Bychawski, counsel for The Bank of Nova Scotia and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, A&M is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtors, including all proceeds (the "**Property**").

RECEIVER'S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
 - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the Debtors;
 - (g) to settle, extend or compromise any indebtedness owing to the Debtors;
 - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
 - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
 - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the

Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$500,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000, and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

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

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (i) the Debtors; (ii) all of the Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PERSONAL INFORMATION

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection,

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

16. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver's appointment; or,
 - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

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

RECEIVER'S ACCOUNTS

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

21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

23. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
24. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
25. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
26. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

27. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

SERVICE AND NOTICE OF MATERIALS

28. The Receiver shall establish and maintain a website in respect of these proceedings at: www.alvarezandmarsal.com/communitymarine (the "**Website**") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
32. Notwithstanding paragraph 31 of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

SEALING ORDER

34. The Exhibits to Confidential Affidavit #2 of Sandra Brown-John sworn August 5, 2021 shall be sealed on the Court record.
35. Access to sealed items permitted shall be by further Court Order.
36. Items to be sealed shall be:

Document Name	Date Filed	Number of copies filed, including any extra copies for the judge	Duration of sealing order:
Exhibits to Confidential Affidavit #2 of Sandra Brown-John, sworn August 5, 2021	[-]	[-]	Until further order

GENERAL

37. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
38. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
40. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
41. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
42. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
43. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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

APPROVED BY:

Signature of Peter Bychawski, lawyer for the
Petitioner

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the Receiver (the "**Receiver**") of all of the assets, undertakings and properties of Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd., and 0736657 B.C. Ltd. acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the _____ day of _____, 201____ (the "**Order**") made in SCBC Action No. _____ and/or SCBC Action No. _____/Estate No. _____ has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the _____ day of _____, 2021.

Alvarez & Marsal Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:
Name:
Title:

SCHEDULE "B"

Demand for Notice

TO: **The Bank of Nova Scotia**
c/o Blake, Cassels & Graydon LLP
Attention: Peter Bychawski/Claire Hildebrand
Email: peter.bychawski@blakes.com/claire.hildebrand@blakes.com

AND TO: **Alvarez & Marsal Canada Inc.**
c/o [Name of Counsel to the Receiver]
Attention:
Email:

Re: **In the matter of the Receivership of Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd., and 0736657 B.C. Ltd.**

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

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

OR

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

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____