



No. S217202  
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

NOTICE OF APPLICATION

Name of applicant: Huai Yin Zhang (the "Applicant")

To: The Attached Service List Marked as **SCHEDULE "A"**

And To: 1129057 B.C. Ltd.

And To: Amber Mortgage Investment Corp.

TAKE NOTICE that an application will be made by the Applicant to the presiding judge or master at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on April 14, 2022 at 9:45 a.m. for the order set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "B"**.
2. Such further and other relief as this Honourable Court may deem just.

**Part 2: FACTUAL BASIS**

3. The Applicant is the Director and an owner of the Respondent companies in this proceeding, Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd., and 0736657 B.C. Ltd. (the "Respondents").

4. The Petitioner, Bank of Nova Scotia ("BNS"), provided the Respondents with 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 "BNS Loan"), to provide bridge financing for CMC's construction of the Victoria International Marina in Victoria, B.C., the details of which are set out in the Petition to appoint a receiver, filed by BNS on August 6, 2021 and the Response to the Petition filed October 28, 2021.
5. The Respondents defaulted on the terms of the BNS Loan, resulting in BNS commencing the Petition.
6. On November 1, 2021, the Honourable Mr. Justice Groves made a Consent Order appointing Alvarez Marsal Canada Inc. as receiver (the "Receiver"), as of 12 a.m. on December 13, 2021, in the event that BNS did not file a certificate confirming that the Respondents had paid all amounts owing on the BNS Loan.
7. The Respondents were unable to pay all amounts due and owing to BNS by December 13, 2021, and the Receiver was duly appointed.
8. On March 8, 2022, the Receiver provided an estimate of the payout required to discharge the Receiver, assuming an end of the receivership by April 30, 2022. According to the *estimated* amounts provided by the Receiver, the amount required to payout the Receivership (including after the \$6 million Bank Draft, as defined below, is applied to the BNS Loan), is **\$5,141,686.59** (the "Discharge Amount")
9. The Discharge Amount may be adjusted upwards as a result of further holdbacks by the Receiver, and a potential posting of security for a lien in the sum of \$650,000, which will be accounted for by the hearing date (the "Adjustments").
10. As further set out below, if the relief sought in this application is granted, and regardless of the Adjustments, the Respondents expect to be in a position, upon closing of the refinancing described below, to pay the entire remaining balance of the BNS Loan,

discharge the security registered by BNS against the property of the Respondents, and to discharge all other debts and obligations as required by the Receiver.

### **The Interim Distribution**

11. The Applicant seeks an order for distribution of \$4,000,000 of funds held by the Receiver to be applied as a partial payment against the Debtors' loan and financial obligations to BNS as of the date of distribution, is hereby approved, and an order that the Receiver is hereby authorized and directed to make that distribution to BNS (the "**Interim Distribution**").

### **\$6 Million held by BNS**

12. On February 28, 2022, the Applicant caused a Royal Bank of Canada bank draft (the "Bank Draft") in the amount of \$6,000,000 to be provided to BNS at the branch located at 1576 West 41<sup>st</sup> Avenue, Vancouver B.C (the \$6 Million Bank Draft").
13. The \$6 Million Bank Draft was obtained from a company named Yeakon Minoru Blvd Holdings Ltd. ("YeaKon"), which is duly incorporated in the Province of British Columbia with incorporation number BC1292257 and has a registered and records office at PO BOX 49290, 1000-595 Burrard St, Vancouver, B.C., as lender. The Applicant signed an agreement with Yeakon on behalf of the Applicant Community Marine Concepts Ltd. ("CMC"), and also as a guarantor (the "YeaKon Loan Agreement"). The Yeakon Loan Agreement included as a schedule a promissory note that the Applicant signed on behalf of CMC. The Applicant says that, at that time, she did not fully understand at the time that she was not permitted to sign such an agreement on behalf of any of the Respondents.
14. On or about March 7, 2022, after learning that she was not permitted to enter into the Yeakon Loan Agreement on behalf of the Respondents, the parties to that agreement modified the Yeakon Loan Agreement as follows:

*"All parties have agreed to a modification to a loan agreement between Yeakon Minoru Blvd Holdings Ltd. And Community Marine Concepts Ltd. And Huaiyin Zhang, Haoran Zhang and Dongxia Zhang for a \$6,000,000 loan signed on Feb 1st, 2022. The "Borrower" in the above loan agreement will be replaced by Huaiyin Zhang and Dongxia Zhang. The promissory note in Schedule A is revoked."*

(the “Yeakon Loan Modification Agreement”)

15. By letter dated March 16, 2022, counsel for BNS indicated that BNS was holding the \$6 million pending further assurances set out in that letter, including that certain assurances in the letter be sworn by all parties to the Yeakon Loan Agreement and the Yeakon Loan Modification Agreement. Those parties have duly signed the March 16, 2022 letter from counsel for BNS, which is set out as an exhibit in the affidavit of the Applicant in support of this application.
16. As set out in the Draft Order at Schedule “B”, the Applicant seeks an Order that the funds from the \$6 Million Bank Draft be applied to the BNS Loan and an Order that the Receiver is authorized and directed to make that distribution.

#### **The \$5,000,000 1129057 B.C. Ltd. Loan**

17. The Applicant has arranged a \$5,000,000.00 loan by 1129057 B.C. Ltd. (the “First Lender”) to 0736657 B.C. Ltd., as “Nominee”, and Community Marine Concepts Ltd., as “Beneficial Owner” as set out and described in the commitment letter issued by Amber Financial Services Corporation on behalf of the First Lender to the Beneficial Owner of behalf of the Respondents dated February 25, 2022 (the “1129057 Commitment Letter”), which is set out as an exhibit in the affidavit of the Applicant in support of this application.
18. As set out in the Draft Order and the affidavit material, the Applicant seeks authorization to sign the 1129057 Commitment Letter on behalf of the Respondents, as well as such security documents and other documents as are required to complete the financing with the First Lender.

#### **The \$5,000,000 Amber Mortgage Loan**

19. The Applicant has arranged a further \$5,000,000.00 loan by Amber Mortgage Investment Corp. (the “Second Lender”) to 0736657 B.C. Ltd., and Community Marine Concepts Ltd. as set out and described in the commitment letter issued by Amber Financial Services Corporation on behalf of the Second Lender dated March 1, 2022 (the “Amber Commitment Letter”), which is set out as an exhibit in the affidavit of the Applicant in support of this application.

20. As set out in the Draft Order and the affidavit material, the Applicant seeks authorization to sign the Amber Commitment Letter on behalf of the Respondents, as well as such security documents and other documents as are required to complete the financing with the Second Lender.
21. In respect of the loans from the First Lender and the Second Lender, it is intended that those funds be paid to discharge the BNS Loan, with the requirement that the security registered by BNS be discharged, and also that the remaining funds as required be allocated toward payment of such debts, liabilities and obligations as are required to discharge the Receiver.

### Part 3: LEGAL BASIS

22. Subsection 39(1) of the *Law and Equity Act* R.S.B.C. 1996 and Section of the *Bankruptcy and Insolvency Act* RSC 1985 c B-3.
23. The Applicant and the Debtors have a right to redeem the BNS Loan. In *Kruger v. Wildgoose Vintners Inc.*, the Court in considering the right of a debtor to redeem at paras. 69-70:

69 The essence of a right to redeem is a debtor's right, upon payment of a debt, to recover the property it gave to the creditor as security for payment of the debt. The right exists as a consequence of the fact that the property was only ever given to the creditor as security. The court will facilitate redemption by ordering of the conveyance of an interest in land or discharge of security registered against title to the land, *Law and Equity Act R.S.B.C. 1996 c. 253, s. 17 [LEA]*. The debtor is entitled to have the security held by the creditor assigned to a third party of the debtor's choosing, *LEA* s. 14.

70 While some relevant provisions of the *LEA* are specific to land, they reflect equitable rules that apply to mortgages and other forms of security generally.

71 The question of redemption most often arises in foreclosure proceedings. In this context, the law generously affords to the mortgagor an unfettered right to redeem up until the time an order absolute of foreclosure is pronounced, or the property is sold under an order for sale. *Pollard v. Regional District of Central Okanagan*, 2005 BCCA 159, at paragraph 30. The court even retains a jurisdiction to permit an order absolute to be set aside to permit redemption, although in this case there must be a good reason for it, and the mortgagor can no longer redeem as of right. *Industrial Development Bank v. Thornhill Auto Wreckers Ltd.*, [1974] 2 WWR 57 (B.C.C.A.), at 60.

72 The rights and obligations of mortgagors and mortgagees in foreclosure proceedings have been worked out over many hundreds of years of jurisprudence. Proceedings for the realization of the rights of secure creditors through a court-appointed receivership are a more recent invention.

73 The procedure in receivership proceedings is flexible. There is no requirement that a creditor obtain an

order nisi before applying for an order for sale, for example. However, deference is still afforded to a debtor who wishes to redeem. *Bank of Montreal v. Hester Creek Estate Winery Ltd.*, 2004 BCSC 724, involved a sale by a court-appointed receiver/manager in which the debtor sought to tender the amount owing and redeem at the hearing of an application to approve a sale of the debtor's assets. At paragraph 27, Justice Tysoe, as he then was, observed that:

Whenever there is a court-ordered-sale process, it is always implicit that the conduct of sale is subject to the debtor being able to pay off the secured creditor before a sale is approved by the court. I am aware of no authority to the effect that the granting of conduct of sale precludes the debtor from redeeming the property. Allowing a redemption of the mortgaged property in these circumstances does not blemish the integrity of the court process but, rather, it represents the court process at work.

24. In this instance the Applicant and the Debtors, upon closing of the refinancing, have sufficient funds to redeem the BNS Loan and such other liabilities as may be required to discharge the Receiver. At the time of the filing of this application, there is no application approve the sale of the property of the Debtors. It is submitted that the Applicant and the Debtors therefore have a right of redemption and that the relief sought should be allowed.

#### **Part 4: MATERIALS TO BE RELIED ON**

1. Affidavit #1 of Huai Yin Zhang , sworn on April 4, 2022;
2. Affidavit #1 of Beatriz Martinez, sworn on August 6, 2021;
3. Affidavit #1 of Sandra Brown-John, sworn on August 5, 2021;
4. Confidential Affidavit #2 of Sandra-Brown-John, sworn on August 5, 2021;
5. Petition filed August 6, 2021;
6. Response to Petition filed October 28, 2021;
7. Consent Order made after Application (Appointment of Receiver) of Honourable Mr. Justice Groves, made November 1, 2021;
8. Such further and other material as this Honourable Court deems just.

The applicant estimates that the application will take 30 minutes.

☒ [X] This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of

application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: April 4, 2022

Signature of ☒ lawyer for applicants  
Glen Forrester

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ..... of  
Part 1 of this notice of application

☐ with the following variations and additional terms:

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

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

Signature of ☐ Judge ☐ Master

## APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

THIS APPLICATION INVOLVES THE FOLLOWING:

*[Check the box(es) below for the application type(s) included in this application.]*

- ☐ document discovery
- ☐ oral examination for discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial

- ☐ service
- ☐ mediation
- ☒ adjournments
- ☐ proceedings at trial
- ☐ case plan orders
- ☐ experts



Shedule "A"

No.: S-217202  
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PETITIONER

AND:

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

RESPONDENTS

**SERVICE LIST**

Blakes, Cassels & Graydon LLP Suite 2600 – 595 Burrard St. Vancouver, BC V7X 1L3  Attention: Peter Bychawski / Claire Hildebrand  Tel: (604) 631-3300 Email: peter.bychawski@blakes.com claire.hildebrand@blakes.com  <i>Counsel for the Petitioner</i>	Forrester & Company 300 – 171 Water Street Vancouver, BC V6B 1A7  Attention : Crystal Law / Glen Forrester  Tel : (604) 682-1066 Email : claw@forresterbarristers.ca gforrester@forresterbarristers.ca  <i>Counsel for the Respondents</i>
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<p>Dentons Canada LLP 20<sup>th</sup> Floor – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John Sandrelli / Emma Newbery</p> <p>Tel: (604) 443-7132 Email: john.sandrelli@dentons.com emma.newbery@dentons.com sarah.howes@dentons.com avic.arenas@dentons.com</p> <p><i>Counsel for Court-Appointed Receiver (Alvarez &amp; Marsal Canada Inc.)</i></p>	<p>Alvarez &amp; Marsal Canada Inc. Cathedral Place Building 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3 L2</p> <p>Attention: Todd Martin / Pinky Law</p> <p>Tel : (604) 638-7440 Email: tmartin@alvarezandmarsal.com pinky.law@alvarezandmarsal.com</p> <p><i>Court-Appointed Receiver</i></p>
<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 1A3</p> <p>Attention: Kibben Jackson</p> <p>Tel: (604) 631-3131 Email: kjackson@fasken.com</p> <p><i>Counsel for Ed Scripps</i></p>	<p>JFK Law Corporation 816 – 1175 Douglas Street Victoria BC V8W 2E1</p> <p>Attention: Robert Janes, QC</p> <p>Tel: 1-250-405-3460 Email: rjanes@jfkclaw.ca; krosey@jfkclaw.ca</p> <p><i>Counsel for Songhees First Nation</i></p>
<p>Allen / McMillan Litigation Counsel 1625 – 1185 West Georgia St. Vancouver, BC V6E 4E6</p> <p>Attention: Wes McMillan</p> <p>Tel: 604-282-3980 Email: wes@amlc.ca / thea@amlc.ca</p> <p><i>Counsel for Blue Water Systems Ltd.</i></p>	<p>Justice Health and Revenue Legal Services Branch Ministry of Attorney General PO Box 9280 Stn Prov Govnt Victoria, BC V8W 9J7</p> <p>Attention: Aaron Welch / Cindy Cheuk</p> <p>Tel: 1-250-387-6121 Email: AGLSBRevTaxInsolvency@gov.bc.ca Aaron.Welch@gov.bc.ca Cindy.Cheuk@gov.bc.ca</p> <p><i>Ministry of Attorney General</i></p>

<p>Pearlman Lindholm 201 – 19 Dallas Road Victoria, BC V8V 5A6</p> <p>Attention: Mikaila Mauro</p> <p>Tel: 1-250-388-4433 Email: <a href="mailto:mmauro@pearlmanlindholm.com">mmauro@pearlmanlindholm.com</a> Email: <a href="mailto:adahl@pearlmanlindholm.com">adahl@pearlmanlindholm.com</a></p> <p>Counsel for Andrea Guyon</p>	
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Schedule "B"

No. S-217202  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE BANK OF NOVA SCOTIA

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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

)  
)  
)

\_\_\_/04/2022

THE APPLICATION of Huai Yin (Alyssa) Zhang (the "**Applicant**"), coming on for hearing at Vancouver, British Columbia, on the 14<sup>th</sup> day of April, 2022 AND ON HEARING Glen Forrester, counsel for the Applicants, Tevia Jeffries, counsel for Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver, (the "**Receiver**") of the assets, undertakings and properties of the Respondents Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd. and 0736657 B.C. Ltd. (the "**Debtors**"), Peter Bychawski, counsel for The Bank of Nova Scotia ("**BNS**"), and those other counsel listed on Schedule "A" hereto, AND UPON READING the material filed;

THIS COURT ORDERS AND DECLARES THAT:

**Redemption Date**

1. Subject to paragraph 2 of this Order, and notwithstanding any other paragraph of this Order:
  - (a) If the Receiver's Certificate (as defined in paragraph 10 of this Order) is filed on or before April 29, 2022 (the "**Redemption Date**");
    - i. the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtors (the "**Property**"), provided that notwithstanding its discharge herein: (i) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (ii) the Receiver shall continue to have the benefit of

the provisions of all Orders made in this proceeding, including all approvals, protections, charges and stays of proceedings in favour of Alvarez & Marsal Canada Inc. in its capacity as Receiver;

- ii. the stay of proceedings against or in respect of the Debtors or the Property set out in paragraph 9 of the Consent Receivership Order shall terminate;
- iii. Alvarez & Marsal Canada Inc. shall be released and discharged from any and all liability that Alvarez & Marsal Canada Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Alvarez & Marsal Canada Inc. while acting in its capacity as Receiver herein, save an except for any liability resulting from gross negligence or willful misconduct of Alvarez & Marsal Canada Inc. Without limiting the generality of the foregoing, upon filing the Receiver's Certificate, Alvarez & Marsal Canada Inc. shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings; and
- iv. the Debtors expressly assume any and all claims or liabilities attributable to the Debtors or the Property, whether arising before or after the date of the Consent Receivership Order, to the extent such claims and liabilities have not been fully satisfied prior to filing of the Receiver's Certificate.

(b) If the Receiver's Certificate is not filed on or before the Redemption Date, the Receiver shall be at liberty to sell, convey, transfer or assign the Property or any part or parts thereof subject to the approval of this Court, and the Applicant.

2. The Redemption Date may be extended by written agreement of the Applicant, BNS, and the Receiver or by further Order of this Court made on or before the Redemption Date.

#### **The \$6 Million Payment to BNS**

3. BNS is hereby authorized and directed to apply the funds in the amount of \$6,000,000, provided to it by way of the February 4, 2022, Royal Bank of Canada bank draft and delivered to the BNS branch located at #1576 West 41<sup>st</sup> Avenue, Vancouver B.C. on February 28, 2022 as a partial payment against the Debtors' loan and financial obligations to BNS (the "**RBC Draft Payment**") as of the date of the RBC Draft Payment.

#### **Distribution Order Re Funds paid to account of Community Marine**

4. The distribution of \$4,000,000 of funds held by the Receiver in trust for the Debtors to BNS, to be applied as a partial payment against the Debtors' loan and financial obligations to BNS as of the date of distribution, is hereby approved, and the Receiver is hereby authorized and directed to make that distribution to BNS (the "**Interim Distribution**").

#### **The \$5,000,000 1129057 B.C. Ltd. Loan**

5. The \$5,000,000.00 loan (the "**First Loan**") by 1129057 B.C. Ltd. (the "**First Lender**") to 0736657 B.C. Ltd. and Community Marine Concepts Ltd. as borrowers as set out and described in the commitment letter issued by Amber Financial Services Corp. on behalf of the First Lender to Community Marine Concepts Ltd. c/o the Applicant dated February 25,

2022 (the "**1129057 Commitment Letter**"), a copy of which is attached as **Exhibit "8"** to the Affidavit #1 of Alyssa Zhang, sworn April 4, 2022 (the "**Zhang Affidavit**"), and the borrowing of the First Loan by 0736657 B.C. Ltd. and Community Marine Concepts Ltd. in accordance with the terms of the 1129057 Commitment Letter, is hereby approved.

6. The execution of the 1129057 Commitment Letter and the First Loan security and other loan documents as set out in or contemplated by the 1129057 Commitment Letter or otherwise required by the First Lender in connection with the First Loan transaction, by the Applicant as a director of and on behalf of the Debtors, is hereby authorized and approved, and the Applicant as a director and on behalf of the Debtors is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the First Loan transaction.

#### **The \$5,000,000 Amber Mortgage Loan**

7. The \$5,000,000.00 loan (the "**Second Loan**") by Amber Mortgage Investment Corp. (the "**Second Lender**") to 0736657 B.C. Ltd., and Community Marine Concepts Ltd. as borrowers as set out and described in the commitment letter issued by the Second Lender to Community Marine Concepts Ltd. c/o the Applicant dated March 1, 2022 (the "**Amber Mortgage Commitment Letter**"), a copy of which is attached as **Exhibit "13"** to the Zhang Affidavit, and the borrowing of the Second Loan by 0736657 B.C. Ltd. and Community Marine Concepts Ltd. in accordance with the terms of the Amber Mortgage Commitment Letter, is hereby approved.
8. The execution of the Amber Mortgage Commitment Letter and the Second Loan security and other loan documents as set out in or contemplated by the Amber Mortgage Commitment Letter or otherwise required by the Second Lender in connection with the Second Loan transaction, by the Applicant, as a director of and on behalf of the Debtors, is hereby authorized and approved, and the Applicant as a director and on behalf of Debtors is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Second Loan transaction.

#### **Distribution of the Proceeds of the First Loan and Second Loan**

9. Upon satisfaction or waiver of all conditions to the First Loan transaction and the Second Loan transaction, in each case in accordance with the terms of the 1129057 Commitment Letter and the Amber Mortgage Commitment Letter, as applicable, the First Lender and the Second Lender are hereby authorized and directed to pay the net proceeds of the First Loan and the Second Loan to, firstly, BNS in such amounts as are required to repay the balance of all amounts owing to BNS by the Debtors, as confirmed in a payout statement to be provided by BNS to the First Lender, in the first instance, and to the Second Lender, with respect to the balance of the Debtors' loan and financial obligations to BNS after receipt by BNS of the RBC Draft Payment, the Interim Distribution, and payment by the First Lender in accordance with this paragraph 9 (collectively, the "**Loan Distributions**").

#### **Receiver's Certificate**

10. The Receiver shall deliver to the Applicant and BNS, and file with this Court, a certificate substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), certifying that:
  - (a) The First Loan transaction and the Second Loan transaction, described in the 1129057 Commitment Letter and the Amber Mortgage Commitment Letter respectively, have closed and the Loan Distributions have been made to BNS;
  - (b) All amounts owing by the Debtors to BNS have been paid in full, as confirmed by writing by BNS, inclusive of all principal, fees, costs (including but not limited to legal and financial advisor fees), and payment-in-kind interest owing by the Debtors, jointly and severally, to BNS pursuant to or in connection with the Commitment Letter, Mortgage, GSAs, Guarantees, Financial Advisor Agreement, and CEBA Loans (in each case as defined in Affidavit #1 of Beatriz Martinez sworn in this proceeding on August 9, 2021) and any other documents, instruments, and agreements executed pursuant thereto or in connection therewith;
  - (c) The Receiver and its legal counsel have passed their accounts in accordance with paragraph 22 of the Consent Receivership Order dated November 1, 2021 (the "**Consent Receivership Order**"), and the activities of the Receiver, as described in any Reports to Court filed by the Receiver prior to the date of the Receiver's Certificate, have been approved; and
  - (d) The Receiver has made all distributions of funds authorized and directed by this Court prior to the date of the Receiver's Certificate.
11. The distributions and payments made pursuant to this Order, including but not limited to the RBC Draft Payment, the Interim Distribution, and the Loan Distributions, shall be deemed to be made free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.
12. Notwithstanding:
  - (a) the pendency of these proceedings;
  - (b) the assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any order issued pursuant to such petition; or
  - (c) any provisions of any federal or provincial legislation,the distributions and payments permitted by this Order, including but not limited to the RBC Draft Payment, the Interim Distribution, and the Loan Distributions, and the completion of the First Loan Transaction and the Second Loan Transaction pursuant to this Order, shall be binding on any trustee in bankruptcy or receiver that may be appointed and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any

other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. The Applicants, the Receiver, BNS, or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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

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Glen Forrester, Lawyer for the Applicants

---

Tevia Jeffries, Lawyer for the Receiver

---

Peter Bychawski, Lawyer for The Bank of Nova Scotia

BY THE COURT

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REGISTRAR



## Schedule A – Service List

**Schedule B – Receiver's Certificate**

No. S-217202  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**THE BANK OF NOVA SCOTIA**

PETITIONER

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

RESPONDENTS

**RECEIVER'S CERTIFICATE**

The undersigned hereby certifies for the purposes of the Order made on the \_\_\_\_ day of April, 2022 (the "Order", all capitalized terms used but not defined herein have the meaning ascribed to them in the Order) in the within matter that:

1. The loan transactions described in the 1129057 Commitment Letter and the Amber Mortgage Commitment Letter have closed;
2. All amounts owing by the Debtors to BNS have been paid in full inclusive of all principal, fees, costs (including but not limited to legal and financial advisor fees), and payment-in-kind interest owing by the Debtors, jointly and severally, to BNS pursuant to or in connection with the Commitment Letter, Mortgage, GSAs, Guarantees, Financial Advisor Agreement, and CEBA Loans (in each case as defined in Affidavit #1 of Beatriz Martinez sworn in this proceeding on August 9, 2021) and any other documents, instruments, and agreements executed pursuant thereto or in connection therewith;
3. The Receiver and its legal counsel have passed their accounts in accordance with paragraph 22 of the Consent Receivership Order, and the activities of the Receiver, as described in the Receiver's First Report to Court, dated \_\_\_\_\_, 2022, have been approved; and
4. The Receiver has made all distributions of funds authorized and directed by this Court prior to the date hereof.

Dated at Vancouver, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2022.

ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Receiver of Community  
Marine Concepts Ltd., Victoria International

Marina Ltd., Eternaland Yuheng Investment  
Holding Ltd., and 0736657 B.C. Ltd.

Per:

---

Name:

Title:

**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

**NOTICE OF APPLICATION**

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FORRESTER & COMPANY LAW CORPORATION  
Barristers  
300 - 171 Water Street  
Vancouver, BC V6B 1A7  
Telephone: (604) 682-1066  
Facsimile: (604) 682-8036  
Attention: Glen Forrester