



No. S-1813807  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,  
AS AMENDED

AND

IN THE MATTER OF MASHIKO NISHIYAMA,  
BANKRUPT UNDER THE LAWS OF JAPAN

**NOTICE OF APPLICATION**

**Name of applicant:** Hiroshi Morimoto, trustee over the bankruptcy estate of Masahiko Nishiyama (the "Trustee")

To: Masahiko Nishiyama

TAKE NOTICE that an application will be made by the applicant before Mr. Justice Voith at the courthouse at 800 Smithe Street, Vancouver, British Columbia on ~~Friday~~ *THURSDAY*, February 15, 2019 at 9:00 a.m. for the orders set out in Part 1 below. *14*

**Part 1: ORDERS SOUGHT**

1. An Order appointing Alvarez & Marsal Canada Inc. as Receiver of all or any of Masahiko Nishiyama's assets, undertakings and property in Canada in the form of order attached as **Schedule "A"**; and
2. An Order that the time for service of this Notice of Application and the materials referred to herein pertaining to this Order be abridged.

**Part 2: FACTUAL BASIS**

The Parties

1. The Trustee was appointed by order of the Kyoto District Court on March 15, 2016, as the trustee over the bankruptcy estate of Masahiko Nishiyama. ("**Nishiyama**").
2. By order of Madam Justice Maisonville of the Supreme Court of British Columbia, made on December 21, 2018 (the "**Recognition Order**"); the Trustee was recognized by this Honourable Court as the foreign representative in these proceedings.

3. The Trustee has also obtained foreign recognition from the courts of Singapore and Hong Kong.

4. Nishiyama, is a bankrupt and a citizen of Japan who has for many years carried on a business both in his own name and through a number of corporations.

#### Background of the Bankruptcy of Nishiyama

5. Over a number of years, the Resolution and Collection Corporation ("**RCC**") (formerly the Housing Loan Administration Corporation) made loans to Nishiyama and a number of related parties and companies. Nishiyama and the related parties and companies failed to repay those loans to RCC.

6. RCC commenced legal action against Nishiyama and was granted judgment by the Kyoto District Court on February 9, 2012, in the amount of Yen 40,740,539,251 plus interest and costs.

7. RCC then commenced legal action again against Nishiyama for concealing and hiding assets in corporations and with family members. RCC was granted judgment by the Kyoto District Court on October 29, 2013, in the amount of Yen 3,960,000,000 plus interest (the "**2013 Judgment**").

8. In the 2013 Judgment, the Kyoto District Court referred the evidence from that hearing to the Japanese authorities, specifically, the determination that Nishiyama was dissipating and concealing assets beyond the reach of his creditors in order to evade the anticipated enforcement of the 2013 Judgment.

9. On February 10, 2016, RCC filed a petition for bankruptcy against Nishiyama based on his inability or failure to repay debts. Nishiyama did not file a response in those proceedings and the Kyoto District Court issued a Bankruptcy Commencement Order on March 15, 2016.

10. On June 22, 2016, the Courts in Japan found Nishiyama guilty of certain acts which fall under Article 60 and Article 96-2 (i) of the *Penal Code* in Japan, related to purposely concealed assets, conspiring with others to move assets out of Japan and into other jurisdictions such as Canada and in so doing he obstructed compulsory execution against these assets in Japan.

11. As a result of being found guilty in Japan, the Japanese Court sentenced Nishiyama to three (3) years in prison in Japan and under Article 21 of the *Penal Code* applied 140 days spent in pre-sentencing detention into the sentence imposed.

12. On July 26, 2018, Nishiyama was granted parole from Japanese prison.

13. In addition to his criminal conviction, Nishiyama has not complied with the *Bankruptcy Act* in Japan and has failed to cooperate with the Trustee in his bankruptcy.

#### British Columbia Proceedings

14. Nishiyama spent a significant amount of time in British Columbia prior to 2012. The Trustee is aware of certain assets that are located in British Columbia, and some of those

known assets have been subject to a Mareva injunction issued by this Court in favour of RCC in the RCC Action (defined below).

15. The Trustee is aware of two actions currently before the Supreme Court of British Columbia that relate to property, both real and personal, of Nishiyama in British Columbia, namely:

- (a) proceedings commenced by way of Notice of Civil Claim by RCC against Nishiyama under SCBC Action No. S162298, Vancouver Registry (the "**RCC Action**").
- (b) proceedings commenced by way of Petition by The Owners, Strata Plan BCS4016 against Sun Moon Management Ltd., a company related to and controlled by Nishiyama, under SCBC Action No. S1810083, Vancouver Registry (the "**Strata Action**").

16. The Strata Action concerns a residential strata property, PID 028-447-263, located at civic address #4102 1028 Barclay Street, Vancouver, British Columbia (the "**Condo**").

17. RCC was granted a Mareva-type freezing order over Nishiyama's Canadian assets by Mr. Justice Voith of this Court on March 11, 2016 (the "**Freezing Order**").

18. On August 30, 2018, Mr. Justice Voith of this Court granted an order amending the Freezing Order to include the Condo.

19. Discovery in the RCC Action has disclosed the presence of a safety deposit box bearing number 8876 located at the Royal Bank of Canada ("**RBC**") branch 00010 in Vancouver, British Columbia (the "**Safety Deposit Box**").

20. On November 30, 2018, Mr. Justice Voith of this Court, made an order requiring RBC to disclose the contents of the Safety Deposit Box to RCC (the "**Safety Deposit Contents Disclosure Order**"). An additional term of the Safety Deposit Contents Disclosure Order permitted RCC to share the list of the contents of the Safety Deposit Box with the Trustee.

#### Current Situation and Urgent Need for a Receiver

21. The Trustee seeks the assistance of a receiver in Canada in order to preserve and administer the assets of the bankruptcy estate located in Canada.

22. In particular, the Trustee urgently wishes the receiver to take inventory of, and if warranted, possession of, any of Nishiyama's assets or personal property and records located in:

- (a) the Condo prior to access by buyers and real estate agents; and
- (b) the Safety Deposit Box.

23. On February 5, 2019, Mr. Justice Voith of this Court granted an order for conduct of sale of the Condo to the Petitioners in the Condo Action. The sales process will commence in 30 days and realtors will be in a position to take potential buyers through the Condo.

24. Nishiyama has made formal requests to travel to Canada, and specifically to reside in the Condo while in British Columbia.

25. Under Japanese law a bankrupt is required to obtain the permission of the bankruptcy court, notably if the bankrupt travels for two consecutive nights or more away from his reported residence address, or if the bankrupt travels for one night or more to a foreign country.

26. The Trustee has made submissions to the Japanese bankruptcy court that the applications to travel abroad submitted by Nishiyama should be denied. The Japanese courts have denied Nishiyama's applications to date, however, Nishiyama has filed a special complaint to the Japanese Supreme Court as well as a petition for a writ of certiorari with the Japanese Court of Appeal which has not yet been determined. The Trustee has no further authority or method to prevent Nishiyama from travelling abroad if Nishiyama decides to travel without the Trustee's permission and Nishiyama has been uncooperative with the Trustee at every opportunity.

27. The Trustee believes that if Nishiyama does manage to come to Canada, there is a risk that he will attempt to dissipate or otherwise alienate his Canadian assets.

#### Notice to Nishiyama

28. Nishiyama has not reported his residential address to the Trustee. The Trustee has located Nishiyama's registered residence address, and has sent letters to that address (Ohaza-Zengi 1038-1, Shimoichi-cho, Yoshino-gun, Nara-ken) (the "**Residential Address**") multiple times.

29. Nishiyama has been hostile and uncooperative with the Trustee and is also evading attempts to locate him.

30. The Trustee is aware of the following Japanese lawyers who have worked with, or are currently working with Nishiyama in different capacities in various proceedings:

- (a) Takeyoshi Nakamichi, Nakamichi Takeyoshi Law Office, 11-20 Nishitenma 1-chome, Kita-ku, Osaka-shi, Osaka, Japan;
- (b) Teruo Naka, Shiina Law Firm, KyotoAdachi Building 2F, Shogin Kawahara-cho 1-6, Sakyo-ku, Kyoto, Japan; and
- (c) Tatsuo Murao, CAST Legal Profession Corporation – Tokyo Office, Atago Green Hills Tower 34F, 2-5-1 Atago, Minato-ku, Tokyo 105-6234, Japan.

31. When the Recognition Order was granted, the Trustee delivered a copy of the order to Mr. Murao and within three days the Trustee received from Mr. Murao confirmation signed by Nishiyama that he had received the Recognition Order.

32. The Trustee also sent a copy of the Recognition Order to the Residential Address and this was received.

Consent of the Receiver

33. Alvarez & Marsal Canada Inc. has consented to act as the receiver of all or any of Nishiyama's assets, undertakings and property in Canada in these proceedings if so appointed by this Court.

**Part 3: LEGAL BASIS**

34. The Trustee pleads and relies on s. 272 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), which states:

**272 (1)** If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order:

...

(d) appointing a trustee as receiver of all or any part of the debtor's property in Canada, for any term that the court considers appropriate and directing the receiver to do all or any of the following, namely,

(i) to take possession of all or part of the debtor's property specified in the appointment and to exercise the control over the property and over the debtor's business that the court considers appropriate, and

(ii) to take any other action that the court considers appropriate.

35. The Trustee seeks also to explicitly waive the requirements for the Receiver to file accounts pursuant to Supreme Court Rule 10-2(4), to send notices pursuant to section 245 of the *BIA* or provide or file statements or reports pursuant to section 246 of the *BIA*.

36. Rules 3 and 6 (1) of the Bankruptcy and Insolvency General Rules. C.R.C., c.368.

37. *Supreme Court Civil Rule* 8-1 (8)(a).

38. The Trustee will also rely on the inherent jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit of Hiroshi Morimoto #1, sworn December 20, 2018.
2. Affidavit of Hiroshi Morimoto #2, sworn February 6, 2019.
3. The pleadings filed herein.

4. Such further and other material as counsel may advise and this Honourable Court may consider.

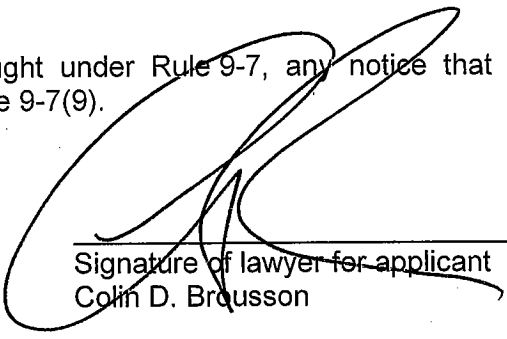
The applicant estimates that the application will take 30 minutes.

- ☐ This matter is within the jurisdiction of a master.
- ☒ 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 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).

Date: February 6, 2019

  
\_\_\_\_\_  
Signature of lawyer for applicant  
Colin D. Brousson

THIS NOTICE OF APPLICATION was prepared by Colin D. Brousson, of the firm of Gowling WLG (Canada) LLP, Barristers & Solicitors, whose place of business and address for delivery is 2300 - 550 Burrard Street, Vancouver, B.C. V6C 2B5, Telephone: 604-683-6498; Fax: 604-683-3558.

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: \_\_\_\_\_ Signature of ☐ Judge ☐ Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts



## Schedule "A"

No. S1813807  
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### IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-6,  
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AND

IN THE MATTER OF MASAHIKO NISHIYAMA,  
BANKRUPT UNDER THE LAWS OF JAPAN

### ORDER MADE AFTER APPLICATION

BEFORE ) , THE DAY  
 )  
 ) OF , 2019

ON THE APPLICATION of Hiroshi Morimoto, Foreign Representative in these proceedings (the "**Trustee**") for an Order pursuant to Section 272(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Alvarez & Marsal Canada Inc. as Receiver (in such capacity, the "**Receiver**") without security, of all or any of the assets, undertakings and property in Canada of Masahiko Nishiyama (the "**Debtor**"), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavits #1 and #2 of Hiroshi Morimoto sworn December 20, 2018 and February 6, 2019 respectively and the consent of Alvarez & Marsal Canada Inc. to act as the Receiver; AND ON HEARING Colin D. Brousson, Counsel for the Applicant 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 272(1) of the BIA Alvarez & Marsal Canada Inc. is appointed Receiver, without security, of all or any of the assets, undertakings and property legally or beneficially owned by the Debtor in Canada, including all proceeds (the "**Property**").
2. The term of this appointment shall continue until further order of this Court.

## RECEIVER'S POWERS

3. 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, to do any of the following where the Receiver and the Trustee consider 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, including, but not limited to the contents of the safety deposit box of the Debtor located at the Royal Bank of Canada, Transit 10, Royal Centre, 1025 West Georgia Street, Vancouver, BC, V6E 3N9 (the "**SDB**") notwithstanding an order made November 30, 2018 in connection with the SDB in an action commenced by The Resolution and Collection Corporation ("**RCC**") against the Debtor in the Vancouver Registry of this Court, Action No. S162298 (the "**RCC Action**");
  - (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 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 but not limited to the engagement of independent legal counsel to review all Records (as defined below) for solicitor client privilege), including, without limitation, those conferred by this Order;
  - (d) to purchase or lease such any equipment, supplies, premises or other assets to receive, preserve and protect the Property, or any part or parts thereof;

- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
- (f) 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 Debtor, for any purpose pursuant to this Order;
- (g) 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;
- (h) to sell, convey, transfer, lease or assign the Property or any part or parts thereof 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;
- (i) 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;
- (j) 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 and as permitted by law;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (m) 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 Debtor, but excluding the Trustee, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. Each of (i) the Debtor; (ii) all of the Debtor's current and former agents, accountants, legal counsel, 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.
5. 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 Property or affairs of the Debtor, 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. The Records shall include all of the contents of the SDB. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
6. 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.
7. 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.

8. The Receiver shall take reasonable steps to protect any solicitor client privilege claimed or claimable by the Debtor with respect to any Records and, in particular, the contents of the SDB.
9. The Receiver is authorized to provide RCC with access to any Records and to the contents of the SDB that are requested by RCC, and any implied undertaking of confidentiality of the part of the Receiver is waived in respect of the Records and to the contents of the SDB, provided that the Receiver shall not provide any records or other documents that are or may be subject to solicitor client privilege without further order of the Court.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

10. 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.

#### **RECEIVER TO HOLD FUNDS**

11. 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 SDB, 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.

## PERSONAL INFORMATION

12. 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

13. 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.
14. 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.

15. 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.
16. Notwithstanding anything in federal or provincial law, but subject to paragraph 13 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**

17. 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**

18. The Receiver will be paid by the Trustee in respect of these proceedings based upon its standard rates for fees and disbursements, whether incurred before or after the making of this Order. The Receiver will be at liberty to apply for a charge as security for

payment of its fees and disbursements as against the Property if it sees fit to do so in the future.

19. The Receiver may pass its accounts from time to time, and for this purpose the accounts of the Receiver are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis, however the Receiver will not be obligated to pass their accounts if they have been approved by the Trustee.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of any monies in its hands, against its fees and disbursements if these accounts are not already paid directly by the Trustee.

#### **SERVICE AND NOTICE OF MATERIALS**

21. An order that the time for service of this Notice of Application and the materials referred to herein pertaining to this Order be abridged and the service is deemed to be good and sufficient.
22. 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.
23. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**").
24. 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.

## GENERAL

25. 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.
26. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. 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.
28. The requirements for the Receiver to file accounts pursuant to Supreme Court Rule 10-2(4), to send notices pursuant to section 245 of the BIA or provide or file statements or reports pursuant to section 246 of the BIA are hereby waived.
29. Nothing in this Order affects the ability of The Owners, Strata Plan BCS4016 to continue its proceedings in this Court, Vancouver Registry Action No.S1810083.
30. Nothing in this Order affects the ability of RCC to continue its proceedings in the RCC Action.

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:

\_\_\_\_\_  
Counsel for Hiroshi Morimoto, Trustee  
Colin D. Brousson

BY THE COURT

REGISTRAR

**Schedule "A"**  
**COUNSEL LIST**

**Schedule "B"**

**Demand for Notice**

**TO: Hiroshi Morimoto, Trustee and Foreign Representative**  
c/o Gowling WLG (Canada) LLP  
Attention: Colin D. Brousson  
Email: colin.brousson@gowlingwlg.com

**AND TO: Alvarez & Marsal Canada Inc.**  
c/o Alvarez & Marsal Canada Inc.  
Attention: Anthony Tillman  
Email: atillman@alvarezandmarsal.com

**Re: In the matter of the Receivership of Masahiko Nishiyama in Supreme Court of British Columbia Action No. S1813807, Vancouver Registry**

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: \_\_\_\_\_

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,  
C. B-6, AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,  
BANKRUPT UNDER THE LAWS OF JAPAN

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**RECEIVERSHIP ORDER**

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GOWLING WLG (Canada) LLP  
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Tel. No. 604.683.6498  
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File No. V49403

JDB/msh

No. S-1813807  
Vancouver Registry

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**NOTICE OF APPLICATION**  
(APPOINT A RECEIVER)

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