



No. S-240493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FOX ISLAND DEVELOPMENT LTD. and ADVANCED VENTURE HOLDING CO.,
LTD.

PETITIONERS

AND:

KENSINGTON UNION BAY PROPERTIES NOMINEE LTD. (FORMERLY
KNOWN AS 34083 YUKON INC.), KENSINGTON UNION BAY PROPERTIES
LIMITED PARTNERSHIP, KENSINGTON UNION BAY PROPERTIES GP LTD,
INTERNATIONAL TRADE CENTER PROPERTIES LTD., SUNWINS
ENTERPRISE LTD., MO YEUNG CHING ALSO KNOWN AS MICHAEL CHING,
MO YEUNG PROPERTIES LTD., SFT DIGITAL HOLDINGS 30 LTD., HOTEL
VERSANTE LTD., BEEM CREDIT UNION, MORTEQ LENDING CORP., CHUN
YU LIU, 1307510 B.C. LTD., JEFFREY RAUCH, RCC HOLDINGS LTD., AND
HEUNG KEI SUNG

RESPONDENTS

NOTICE OF APPLICATION

Name of applicants: The Petitioners, Fox Island Development Ltd. and Advance
Venture Holding Co. Ltd. (together, "**Fox Island**" or "**the
applicants**")

To: The Respondents

TAKE NOTICE that an application will be made by the applicants to the presiding Justice at the
courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on March 4, 2025 at 11:30 a.m. for
the orders set out in Part 1 below.

The applicant estimates that the application will take 1 hour.

☒ This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDER(S) SOUGHT

1. An order abridging time for service of this notice of application to that actually given, or alternatively, an order deeming service to be valid and effective, if necessary; and,
2. An order substantially in the form attached as **Schedule "A"** hereto appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager of all of the undertakings, property and assets of the respondents International Trade Center Properties Ltd. and Hotel Versante Ltd., including in particular the Hotel (as further described below).

Part 2: FACTUAL BASIS

The Parties and Security

3. Pursuant to a loan agreement dated for reference June 14, 2021, as amended on March 7, 2022, and September 7, 2022 (the "**Loan Agreement**"), Fox Island, as lenders, advanced a loan (the "Loan") to the respondents Kensington Union Bay Properties Nominee Ltd. (formerly known as 34083 Yukon Inc.), Kensington Union Bay Properties Limited Partnership, Kensington Union Bay Properties GP Ltd., and International Trade Center Properties Ltd. (collectively the "**Borrowers**").
4. As security for the obligations of the Borrowers pursuant to the Loan Agreement, the Borrowers granted various security in favour of Fox Island, including a mortgage (the "**Loan B Mortgage**") registered on September 28, 2021 over various lands and premises including, among others, the following lands and premises located in Richmond, B.C.:

PID: 030-795-851
Air Space Parcel 2 Section 21 Block 5 North Range 6 West New Westminster
District Air Space Plan EPP73985

PID: 029-611-598
Lot 1 Section 21 Block 5 North Range 6 West New Westminster District Plan
EPP37734 Except Air Space Plan EPP73985

(together, the "**ITC Property**").
5. A hotel known as the "Versante Hotel" is operated on the ITC Property, with a civic address of 8499 Bridgeport Road, Richmond, B.C. (the "**Hotel**").

6. The Hotel was built in 2018 and consists of a four-story hotel and a five-story parking structure. The Hotel has 100 rooms, approximately 8,000 square feet of event space, a restaurant, a roof-top pool and a penthouse lounge.
7. The registered owner of the ITC Property, and the owner of the Hotel, is the respondent International Trade Cent• Properties Ltd. ("**ITC**"), one of the Borrowers.
8. The respondent Mo Yeung Ching, also known as Michael Ching ("**Mr. Ching**"), is the principal and sole director of ITC.
9. The Hotel operator is the respondent Hotel Versante Ltd. (the "**Hotel Operator**"). Mr. Ching is also the principal of the Hotel Operator.
10. In consideration of the Loan made to ITC, the Hotel Operator, among others, granted Fox Island an unlimited joint and several guarantee dated June 14, 2021 (the "**Guarantee**").
11. The Borrowers and the Hotel Operator (together the "Debtors"), among others, granted Fox Island a general security agreement registered on November 22, 2019 and on June 18, 2021 (the "**GSA**").
12. ITC also granted an additional mortgage over the ITC Property registered on October 11, 2023 (the "**Additional Mortgage**").
13. Other security was granted by the Debtors in favour of Fox Island including an assignment of material contracts dated June 14, 2021, an environmental indemnity agreement dated June 14, 2021, a debt service, completion and cost overrun agreement dated June 14, 2021 (the "**Other Security**", together with the Loan B Mortgage, the Loan B Guarantee, the Loan B GSA, and the Additional Mortgage, the "**Security**").
14. The respondent Heung Kei Sung holds a mortgage against the ITC Property registered December 29, 2023.
15. The respondent Beem Credit Union ("**Beem**") holds security interests in all funds and deposits held with Beem on account of Hotel Versante Ltd., ITC, and Mr. Ching, among others, registered October 21, 2019, March 30, 2022, and June 27, 2022,

16. The respondent Morteq Lending Corp. holds a security interest in all of the present and after acquired property of ITC, registered May 13, 2021.
17. The respondent Chun Yu Liu holds a security interest in all of the present and after acquired property of ITC, registered May 14, 2021.
18. The respondent 1307510 B.C. Ltd. holds a security interest in all of the present and after acquired property of ITC and Mr. Ching registered November 2, 2021.
19. The respondent Jeff Rauch holds a security interest in all of the present and after acquired property of Mr. Ching, registered December 1, 2020.
20. The Security granted to Fox Island ranks in priority to the interests of all of the respondent charge-holders.
21. All of the agreements comprising the Security granted to Fox Island provide for the appointment of a receiver in the event of default.

The Foreclosure Proceedings

22. The Debtors defaulted under the terms of the Loan Agreement and the Security by failing to make payments under the Loan Agreement and the Security when due
23. Fox Island and the Debtors, among others, entered into a forbearance and third amending agreement dated February 28, 2023 (the "Forbearance Agreement"), pursuant to which some loan repayments were made to Fox Island. The Debtors defaulted under the terms of the Forbearance Agreement by failing to make payments thereunder when due.
24. Fox Island and the Debtors, among others, entered into forbearance extension agreements dated July 30, 2023 and September 30, 2023 respectively (the "**Forbearance Extension Agreements**"), pursuant to which some further loan repayments were made to the Petitioners. However, the Debtors defaulted under the terms of the Forbearance Extension Agreements by failing to make payments thereunder when due.
25. The amounts owing under the Loan Agreement and secured by the Security were not paid.

26. On December 7, 2023, Fox Island, through counsel, made written demand to the Debtors for repayment Loan indebtedness (the "**Demand**"), which included a notice of intention to enforce security.
27. The Debtors failed or neglected to satisfy the Demand and, accordingly, Fox Island commenced foreclosure proceeding by way of Petition filed on January 24, 2024.
28. An Order Nisi was made by Associate Judge Robertson on February 29, 2024. The Order Nisi declared that the amount required to redeem the ITC Property and the other lands and personal property comprising the Security was \$79,658,326.01 plus interest to the date of payment and costs. The Order Nisi also granted immediate conduct of sale of the Hotel to Fox Island.

Marketing Efforts for the Sale of the Hotel

29. On March 13, 2024, Fox Island entered into an exclusive listing agreement with Avison Young to market the Hotel for a term of six months. The term was extended once, ending on November 3, 2024.
30. Avison Young's marketing efforts included email announcements attaching an information brochure to a targeted group consisting of 1,748 active investors and 449 brokers for a total of 2,197 contacts. By mid-September 2024:
 - (a) 47 parties had signed confidentiality agreements and were provided with access to a confidential information memorandum;
 - (b) 14 tours of the Hotel were conducted; and
 - (c) three letters of intent with non-binding, indicative prices were received from three separate bidders;
31. Fox Island engaged in negotiations with one of the three bidders who submitted a letter of intent but those negotiations did not result in an offer to purchase being made.
32. In August 2024, Fox Island was contacted by another bidder which resulted in an offer to purchase for the Hotel dated on September 4, 2024. The first deposit due under the offer to purchase was received on September 17, 2024, which triggered a 30-day due diligence

period. The offeror subsequently exercised its right to extend the due diligence to November 3, 2024. On November 3, 2024, the offeror confirmed that it could not obtain satisfactory financing and would not proceed, resulting in the offer terminating and the deposit being returned.

33. Since November 2024, no offers have been received from any other parties. However, Fox Island has continued to receive enquiries from parties interested in the Hotel and has entered into extensive and detailed negotiations with a number of them. Three interested parties have expressed an intention to make formal offers in the near future.

Concerns about the Hotel's Management and Operation

34. Trilogy Hotel Management (Richmond) Ltd. (the "**Hotel Manager**") currently provides management services for the Hotel.
35. On December 29, 2024, the Hotel Manager advised Fox Island that, despite the solid business performance of the Hotel in 2024, which had improved over the previous year, Mr. Ching, the owner of the Hotel, directed the Hotel Manager to pay lesser amounts of hotel management staff performance bonuses in 2024 than in 2023. The Hotel Manager also commented: "Whilst we are proud of our accomplishments, unfortunately, Michael Ching neither acknowledges nor appreciates the performance of his hotel manager in achieving these financial and operational results. Both by his words and his contempt for our abilities and the results that we have achieved for him."
36. On January 6, 2025, the Hotel Manager advised Fox Island that: the General Manager of the Hotel had tendered his resignation, and his last day will be January 19, 2025; the Hotel Manager was making arrangements for the former general manager of a well-known Vancouver hotel, with many years of luxury hotel management experience, to take on a temporary management role as the acting General Manager for the Hotel effective January 20, 2025; and Mr. Ching had notified the Hotel Manager that Mr. Ching intends to assume the role of acting General Manager.
37. On January 12, 2025, the Hotel Manager advised Fox Island that the Hotel Manager had sourced a highly qualified individual to assume the role of acting General Manager for the Hotel, effective January 20, 2025. The Hotel Manager also commented that no hotel

management professional would recommend nor support Mr. Ching's decision to assume such role.

38. On January 20, 2025, Fox Island learned that the Hotel Manager had received a letter from Mr. Ching on January 19, 2025, cancelling the hotel management agreement with the Hotel Manager that was effective immediately. Mr. Ching also confirmed to Fox Island that he would not be paying the Hotel Manager's invoices. Based on these events, Fox Island believes that Mr. Ching has now taken control of the hotel management.

Concerns about the use of the Hotel's net income

39. Fox Island requested and has been provided with owner-prepared, comparative income statements for the Hotel from time to time. The most recent statement received from Mr. Ching was for the period up to the end of November, 2024, and indicated a year-to-date net income in excess of \$2,500,000.
40. However, Mr. Ching has not been transparent about the use of the Hotel's net income. In July 2024, and on several occasions thereafter (most recently on January 6, 2025), Fox Island asked Mr. Ching to provide details about the net income and current cash position of the Hotel, and a plan to apply such net income to the debts owing to Fox Island. Mr. Ching refused to provide any further details about the net income and he specifically refused to apply any of the net income to repay the debts owing to Fox Island. Mr. Ching made comments to Fox Island to the effect that that if it took any steps to compel him to pay the net income to Fox Island or take control of the Hotel away from him, that he would stop providing any information on the Hotel, stop cooperating with Fox Island in the sale of the Hotel, and would attempt to create difficulties with respect to the sale efforts, regardless of whether it would be to the detriment of his own interest or Fox Island's.
41. Pending the sale of the Hotel, Fox Island does not object to the Hotel's revenue being applied for purposes related to the ordinary business of the Hotel, such as staff compensation and its daily operation. However, in light of Mr. Ching's refusal to provide details of the net income usage, and the Hotel Manager's information about Ching's refusal to pay bonuses, Fox Island is concerned that Mr. Ching is applying net income generated from the Hotel for his own purposes unrelated to the Hotel's operation.

42. Fox Island is not aware of any meaningful source of income to the Debtors, other than the income generated from the operation of the Hotel. Fox Island understands that the Debtors are in dire need of cash due to the significant indebtedness to Fox Island and other creditors and also due to other outlays for Mr. Ching's other project unrelated to the Hotel.
43. Fox Island understands that: Mr. Ching and his own personal team, and not the Hotel Manager, have full and complete control over the Hotel's financial operations, including exclusive access to all of the Hotel's bank accounts; all accounts payable and tax remittances are handled by Mr. Ching and his personal team; and the Hotel Manager's financial role is limited to presenting bills received by it to Mr. Ching and his personal team for handling.

Concerns over impeding the sale process for the Hotel

44. On multiple occasions Mr. Ching has made comments to Fox Island to the effect that any purchaser of the Hotel would face impediments in operating the Hotel without Mr. Ching's ongoing involvement and cooperation after the sale, making reference to issues regarding the Hotel's right to access and use the Hotel's parking stalls and the Hotel's food and beverage services. Fox Island took these comments to mean that Mr. Ching's intention was to suggest that Fox Island would have difficulties selling the Hotel if potential purchasers were made aware of such impediments.
45. In November and December 2024, Fox Island was advised by two different, unrelated, potential bidders for the Hotel that Mr. Ching had made similar comments to them.
46. Fox Island does not believe that the impediments alleged by Mr. Ching are valid and believes they would likely be readily dispelled by a purchaser's due diligence. However, Fox Island is concerned that Mr. Ching's comments have created uncertainty about the Hotel among potential bidders, which may adversely affect marketing efforts and in particular the willingness of potential bidders to make an offer on the Hotel or conduct due diligence.
47. Fox Island was specifically told by one potential bidder that it would be more willing to make an offer for the Hotel if Mr. Ching was excluded from the management of the Hotel, thereby removing a perceived source of uncertainty as to the management of the Hotel.

48. For all of the above reasons, Fox Island is concerned that its security is at risk, including the significant net income the Hotel is generating, and has lost confidence in the Debtors' ability to protect the operations and the value of the Hotel.

Deloitte — Proposed Receiver

49. As a result of its concerns, Fox Island seeks the court-appointment of Deloitte as the Receiver over the Hotel to protect the operations and value of the Hotel.
50. On January 17, 2025, Deloitte executed a consent to act as receiver of the Hotel.

Part 3: LEGAL BASIS

51. A secured creditor is entitled to the court-appointment of a receiver and manager as a matter of course in circumstances where it may appoint a receiver under the terms of its security. The court should exercise its discretion not to make such an appointment only in those rare occasions where the debtor can show compelling commercial or other reasons why such an order ought not to be made.

United Savings Credit Union v. F & R Brokers Inc., 2003 BCSC 640
Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc., 2012 BCSC 437

52. A court appointment may also be made when "just or convenient."

Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477

53. Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver on default, the burden on the applicant is significantly relaxed. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, the nature of the remedy is not extraordinary or equitable in circumstances where commercial parties have expressly contemplated the appointment in a contract governing their relationship.

Textron at paras. 50 and 75
Bank of Nova Scotia v. Freure Village on Clair Creek, [1996] O.J. No. 5088 at para. 12
Canadian Tire Corp. v. Healy, [2011] O.J. No. 3498 at para. 18
Bank of Montreal v. Carnival National Leasing Limited, [2011] O.J. No. 671 at para. 27
Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd., [1992] O.J. No. 330 at paras. 2 — 6
Ward Western Holdings Corp. v. Brosseuk, 2021 BCSC 919 at para 55

54. In the security granted by the Debtors in favour of the Fox Island, the Debtors agreed that, in the circumstances of a breach, that the Fox Island may appoint a receiver.
55. It would be just and convenient for the court to appoint Deloitte receiver and manager of the Hotel for reasons including:
- (a) Fox Island has the contractual right to appoint a receiver under its security;
 - (b) the Debtors have committed numerous breaches of the security;
 - (c) the security of Fox Island, including the significant net income generated by the Hotel, may be at risk;
 - (d) in the absence of a receiver there is no effective method for Fox Island to protect the value of its security;
 - (e) Fox Island granted considerable accommodations to the Debtors, including providing the Debtors with a generous forbearance period and allowing the Debtors to continue to operate the Hotel after the Order Nisi was granted; and
 - (f) Fox Island has lost confidence that the Debtors can and will reasonably and appropriately manage the Hotel.
56. Fox Island relies on Rules 1-3, 2-1, 10-2, 13-5, 14-1 and 16-1, the *Law and Equity Act*, R.S.B.C. 1996, c. 253 including s. 39, the *Bankruptcy and Insolvency Act* including ss. 31(1), 243(1) and 243(6) and the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 including s. 66, and the law of contract.

Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #2 of Wen Yong Wang made on January 15, 2025;
- 2. The Petition to the Court filed herein;
- 3. Affidavit #1 of Wen Yong Wang made on January 22, 2024;
- 4. Affidavit #1 of Ivy Cheng made on January 23, 2024;

5. Affidavit #1 of Jayda Mangat made on February 27, 2024;
6. The Order Nisi made on February 29, 2024; and,
7. Such further and other materials as counsel may advise and this Honourable Court may permit.

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).

February 25, 2025
Date

"DLA Piper (Canada) LLP"
Signature of ☒ lawyer for filing party
DLA Piper (Canada) LLP (Colin D. Brousson)
Lawyer for the Receiver

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 <input type="checkbox"/> Judge <input type="checkbox"/> Associate
Judge	

SCHEDULE "A"

Order Made after Application re Receivership

APPENDIX

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

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ oral 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
- ☐ none of the above

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FOX ISLAND DEVELOPMENT LTD. and ADVANCED VENTURE HOLDING CO.,
LTD.

Petitioners

AND:

KENSINGTON UNION BAY PROPERTIES NOMINEE LTD. (formerly known as
34083 YUKON INC.), KENSINGTON UNION BAY PROPERTIES LIMITED
PARTNERSHIP, KENSINGTON UNION BAY PROPERTIES GP LTD,
INTERNATIONAL TRADE CENTER PROPERTIES LTD., SUNWINS
ENTERPRISE LTD., MO YEUNG CHING also known as MICHAEL CHING, MO
YEUNG PROPERTIES LTD., SFT DIGITAL HOLDINGS 30 LTD., HOTEL
VERSANTE LTD., BEEM CREDIT UNION, MORTEQ LENDING CORP., CHUN YU
LIU, 1307510 B.C. LTD., JEFFREY RAUCH, and HEUNG KEI SUNG

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE JUSTICE

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February ____, 2025

ON THE APPLICATION of FOX ISLAND DEVELOPMENT LTD. and ADVANCED VENTURE
HOLDING CO., LTD. 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 Deloitte Restructuring Inc. as Receiver
and Manager (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings
and property of International Trade Center Properties Ltd. and Hotel Versante Ltd. (the "**Debtors**")

acquired for, or used in relation a business carried on by the Debtors, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #2 of Wen Yong Wang affirmed on February 25, 2025, and the consent of Deloitte Restructuring Inc. to act as the Receiver;

AND ON HEARING Colin Brousson, Counsel for Fox Island Development Ltd. and Advanced Venture Holding Co., Ltd. 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 Deloitte Restructuring Inc. 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 \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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, licenses, 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 DEBTOR 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 Debtor 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 Debtor 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 Debtor 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 Debtor 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 Debtor shall remain the employees of the Debtors until such time as the Receiver, on the Debtor's 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 \$200,000 (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 "B"** 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: **[WEB ADDRESS]** (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 "C"** (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 the Notice of Application 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 Debtor's 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*.

GENERAL

34. 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.
35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
37. 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.

38. 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.
39. The Applicants shall have their costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Applicants' security or, if not so provided by the Applicants' 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.

40. Endorsement of this Order by counsel appearing on this application other than the Applicants 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 ☒ lawyer
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

REGISTRAR

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that **[RECEIVER'S NAME]**, the [Receiver and/or Receiver and Manager] (the "Receiver") of all of the assets, undertakings and properties of [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, 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 _____, 201__.

[RECEIVER'S NAME], solely in its
capacity as Receiver of the Property, and not
in its personal capacity

Per:

Name:

Title:

SCHEDULE "C"

Demand for Notice

TO: **[Name of Applicant]**
 c/o [Name of Counsel to the Applicant]
 Attention:
 Email:

AND TO: **[Name of Receiver]**
 c/o [Name of Counsel to the Receiver]
 Attention:
 Email:

Re: In the matter of the Receivership of [DEBTOR]

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. S-240493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

FOX ISLAND DEVELOPMENT LTD. and
ADVANCED VENTURE HOLDING CO.
LTD

Petitioners

AND

KENSINGTON UNION BAY
PROPERTIES NOMINEE LTD. (formerly
known as 34083 YUKON INC.) and
others

Respondents

ORDER MADE AFTER APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 117708-00001

CDB/nk7621

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FOX ISLAND DEVELOPMENT LTD. and ADVANCED VENTURE HOLDING CO.,
LTD.

PETITIONERS

AND:

KENSINGTON UNION BAY PROPERTIES NOMINEE LTD. (FORMERLY KNOWN
AS 34083 YUKON INC.), KENSINGTON UNION BAY PROPERTIES LIMITED
PARTNERSHIP, KENSINGTON UNION BAY PROPERTIES GP LTD,
INTERNATIONAL TRADE CENTER PROPERTIES LTD., SUNWINS
ENTERPRISE LTD., MO YEUNG CHING ALSO KNOWN AS MICHAEL CHING,
MO YEUNG PROPERTIES LTD., SFT DIGITAL HOLDINGS 30 LTD., HOTEL
VERSANTE LTD., BEEM CREDIT UNION, MORTEQ LENDING CORP., CHUN YU
LIU, 1307510 B.C. LTD., JEFFREY RAUCH, RCC HOLDINGS LTD., AND HEUNG
KEI SUNG

RESPONDENTS

NOTICE OF APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444
Fax No. 604.687.1612