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March 26, 2024

**Hand Delivered**

The Honourable Justice Darlene Jamieson  
Supreme Court of Nova Scotia  
The Law Courts  
1815 Upper Water Street  
Halifax, NS B3J 1S7

Dear Justice Jamieson:

**Re: In the Matter of the Receivership of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc. 53 19 15**

**Application in Chambers: Thursday, April 4, 2024 at 9:30 a.m.**

We are counsel 4595756 Nova Scotia Limited ("**459NSL**"), the Applicant in the above noted matter.

The Applicant (459NSL), seeks an Order pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and also under the equitable jurisdiction of this Court as partially codified under s. 43(9) of the *Judicature Act*, R.S.N.S. 1989, c. 240 (the "**Judicature Act**") for the appointment of Deloitte Restructuring Inc. ("**Deloitte**") as Receiver and Manager over all of the assets, undertakings, and properties of TCAS Holdings Limited ("**TCAS Holdings**"), Sustainable Fish Farming (Canada) Limited ("**SFFC**"), Sustainable Blue Inc. ("**SBI**") and TCAS IP Inc. ("**TCAS IP**" and together with TCAS Holdings, SFFC and SBI, the "**SFFC Group**").

459NSL brings this application as the SFFC Group is in default of its obligations to 459NSL under its credit facilities and security. As of March 12, 2024, the SFFC Group is indebted to 459NSL in the amount of \$21,577,198.63.

Please accept the following as the submissions of the Applicant (459NSL) in relation to the hearing scheduled for April 4, 2024 at 9:30 a.m.

4124-4454-8943

**I. FACTS**

1. The SFFC Group relies on the affidavit of Thane Stevens sworn on March 26, 2024 (the “**Stevens Affidavit**”) setting out the facts on which this application is based, and the solicitor’s affidavit of David Wedlake sworn on March 22, 2024 (the “**Solicitor’s Affidavit**”), outlining the various interests registered against the property of the SFFC Group.

Nature of SFFC Group’s Business

2. The SFFC Group conducts their business through SFFC. SFFC has been operating since 2010.
3. SFFC owns and operates a land-based marine aquaculture facility in Hants County, Nova Scotia (the “**Facility**”), where it grows Atlantic salmon. Operations at the Facility are based upon, in part, a proprietary water filtration technology owned by TCAS IP and licenced to SFFC. The Facility is the world’s first closed-loop land-based saltwater fishery that re-uses 100% of its water, with zero wastewater emissions.
4. SFFC owns the real property located at 259 Red Bank Road, Centre Burlington, Hants County, Nova Scotia, where the Facility is located. SFFC also leases property at this location from Syscom (UK) Limited. SFFC currently employees 32 full-time staff at the Facility.
5. The Facility is designed to mimic the traditional life-cycle of wild Atlantic salmon. SFFC sells all of its fully-grown fish to a single processor and distributor. SFFC’s fish are transported from the Facility to the processor’s facility, where they are processed into various product forms for market. The processed fish products are marketed under the brand name ‘Sustainable Blue’.
6. The SFFC Facility utilizes a proprietary water filtration technology in order to raise its salmon. This technology is licenced by SFFC from TCAS IP. What sets SFFC’s system apart from other land-based aquaculture facilities is that, through extensive research and development, the SFFC Group have eliminated the requirement to discharge any fishery waste back into the ocean. Because the SFFC system is fully self-contained, its salmon are free of sea lice and other fish diseases and require zero antibiotics.

7. The Facility has the capacity to product up to 1,000 metric tonnes (1 million kilograms) of whole round salmon annually, which is approximately 250,000 fish at four kilograms each.

#### November 4, 2023 Incident

8. On November 4, 2023, the building at the Facility that holds the largest, most mature salmon experienced a structural collapse in a critical piece of equipment (the “**November 4<sup>th</sup> Incident**”). There were approximately 96,000 fish in the particular building on the date of the November 4<sup>th</sup> Incident. All the fish perished within 12 hours.
9. The fish lost represented all of SFFC’s fish scheduled to be harvested between November 28, 2023 and July 31, 2024 (with SFFC’s remaining fish projected to first become market-ready on August 1, 2024). Revised forecasts have extended this date to September 1, 2024 due to delays in the repair of the damaged equipment.
10. As the fish lost were SFFC’s largest, most mature fish in production, SFFC faced an immediate and significant gap in revenue. While fish housed in other buildings at the Facility were unaffected by the November 4<sup>th</sup> Incident, these fish require further development (i.e. time) before they are market ready.
11. With much of its revenue-producing product lost in the Incident, SFFC has depleted its cash reserves in order to maintain operations. Financial forecasts after the November 4<sup>th</sup> Incident indicated a need for new funding of approximately \$12 million in order to stabilize operations. Following the November 4<sup>th</sup> Incident, shareholders have injected approximately \$2.3 million of new money into SFFC and it is anticipated that 459NSL will have advanced approximately \$1.5 million to SFFC by way of protective disbursements (as of March 31), bringing SFFC’s current capital requirements down to approximately \$8.6 million (following March 31, 2024).
12. Growing SFFC’s remaining fish to full size and maturity for sale should allow SFFC to resume supplying its customers in September 2024. Until this time, SFFC faces an immediate liquidity crisis. Keeping SFFC’s remaining fish healthy and on the standard growth track is critical to the future of the business.

### Shareholders

13. The shares of the SFFC Group are ultimately held by (i) a group of approximately 36 shareholders (the “**TCAS Holdings Shareholders**”), and (ii) Bayt Al Qoot UK Ltd. (“**BAQ**”), a body corporate existing under the laws of the United Kingdom, with its owners residing in Morocco and the Middle East. The TCAS Holdings Shareholders (by virtue of holding the shares of TCAS Holdings) are the majority shareholders of TCAS IP, while BAQ is the majority shareholder of SFFC.

### Credit Facilities and Security

14. The Bank of Nova Scotia (“**BNS**”) had extended various credit facilities to the SFFC Group, as set out in the Stevens Affidavit at paragraphs 44 - 45 (the “**Credit Facilities**”). The SFFC Group also executed various security in relation to the Credit Facilities, as set out in the Stevens Affidavit at paragraph 47 (the “**Security**”).
15. The Credit Facilities matured on March 8, 2024. By assignment of debt and security dated March 8, 2024 (the “**Assignment of Debt and Security**”), 459NSL acquired all of BNS’ right, title and interest in the Credit Facilities and Security and the indebtedness owing thereunder, in order to protect the SFFC Group from BNS realizing on its Security and in order to ensure that SFFC could maintain operations until a long-term funding solution could be implemented.
16. In addition to the Applicant (459NSL), the secured creditors of SFFC include Linde Canada Inc. and Atlantic Compressed Air Ltd. in respect of specific equipment. SFFC’s unsecured creditors include the Atlantic Canada Opportunities Agency and the Atlantic Fisheries Fund.

### Financial Circumstances

17. The November 4<sup>th</sup> Incident has had an immediate and significant impact on SFFC’s operations and revenue. With much of its revenue producing product lost, SFFC has depleted its cash reserves in order to maintain operations.
18. SFFC’s operations have been dependent, in part, on capital injections from its shareholders (by way of both equity investments and shareholder loans). Since the

November 4<sup>th</sup> Incident, TCAS Holdings Shareholders have provided the majority of the emergency operating funds to SFFC, despite being the minority shareholders. However, the TCAS Holdings Shareholders are not prepared to continue to fund the operations of SFFC through shareholder loans.

19. Further, as set out in the Stevens Affidavit at paragraph 52, BNS had made it clear it was no longer prepared to provide financial support to the SFFC Group on the maturity of its loans on March 8, 2024 without additional significant commitments from all the shareholders of the SFFC Group.
20. Since acquiring the Credit Facilities and Security, 459NSL has continued to advance funds to SFFC as protective disbursements under the Credit Facilities and Security.
21. 459NSL seeks to enforce its Security in order to restructure the ownership and business of the SFFC Group. In particular, 459NSL's intention is that Deloitte will implement a sale and investment solicitation process (the "**SISP**") in respect of the SFFC Group, in order to properly capitalize SFFC or complete a sale of the SFFC Group (or their business) as a going concern.
22. Should the Order sought in these proceedings be granted, 459NSL intends to return to this Court in the near future to seek approval for the SISP. 459NSL intends to submit a stalking-horse offer as part of the proposed SISP.
23. 459NSL intends to continue funding the working capital needs of SFFC during the course of the proposed receivership. Such amounts will be funded to Deloitte, as the proposed receiver, and be subject to the receiver's borrowing charge and receiver's certificates.

#### Demand for Payment & Appointment of Receiver

24. On March 12, 2024, 459NSL, through its counsel, demanded repayment of the Credit Facilities and the related Security from the SFFC Group. As of March 12, 2024, the SFFC Group is indebted to 459NSL in the amount of \$21,577,198.63. In addition to the demand letters, Notices of Intention to Enforce Security under section 244 of the BIA were issued to the SFFC Group.

25. Deloitte has agreed to act as receiver and Manager over all of the assets, undertakings, and properties of the SFFC Group.

## II. ISSUE

26. Should this Honourable Court appoint Deloitte as the Receiver and Manager over all of the assets, undertakings, and properties of the SFFC Group, pursuant to s. 243(1) of the BIA and s. 43(9) of the *Judicature Act*?

## III. SUBMISSIONS

### Notice

27. The requirement to provide a debtor with Notice of Intention to Enforce Security prior to applying to the court to appoint a receiver is set out at s. 243(1.1) of the BIA (**Book of Authorities, Tab 8**):

*(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless*

*(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or*

*(b) the court considers it appropriate to appoint a receiver before then.*

28. With respect to the time period set out in s. 243(1.1) of the BIA, 459NSL submits that the ten-day waiting period between issuance of the s. 244(1) notice and appointment of a receiver stated in s. 243(1.1) has expired, given that the s. 244(1) notices issued were sent on March 12, 2024.

29. As 459NSL seeks this appointment pursuant to the BIA, it relies on *the Bankruptcy and Insolvency General Rules*, Can. Reg. 368 (the “**BIA Rules**”) (**Book of Authorities, Tab 9**), and in particular, section 6, for both notice and service requirements for this Application. This section provides:

*6. (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be*

*served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.*

*(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules*

*(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission;*  
*or*

*(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.*

*(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.*

*(4) The court may, on an ex parte application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.*

[Emphasis added]

30. Section 3 of the BIA Rules (**Book of Authorities, Tab 9**) states that, in cases not provided for in the BIA or BIA Rules, courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the BIA or BIA Rules.
31. 459NSL submits that the BIA Rules allow for notice of these proceedings to be served via email on four days' notice. 459NSL submits that it has complied with the above provisions such that proper notice of these proceedings has been given.

#### Test for the Appointment of a Receiver

32. Section 243(1) of the BIA provides for the appointment of a receiver as follows (**Book of Authorities, Tab 8**):

*243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:*

*(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person*

*or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;*

- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or*
- (c) take any other action that the court considers advisable.*

33. Thus, this Honourable Court may appoint a receiver where it is "just and convenient" to do so.

34. The factors a court may consider when determining whether it is just and convenient to appoint a receiver are well established in the case law. In *Bank of Montreal v Linden Leas Limited*, 2018 NSSC 82 (**Book of Authorities, Tab 2**), the Court considered an application to appoint a receiver over the respondent's main asset, a cattle herd. The Court cited with approval the following passages from the decision in *Enterprise Cape Breton Corp v Crown Jewel Resort Ranch Inc*, 2014 NSSC 128 (**Book of Authorities, Tab 3**), which sets out factors to be considered in an application to appoint a receiver:

*26 In The 2013-2014 Annotated Bankruptcy and Insolvency Act, Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra (Carswell:Toronto, Ontario 2013-2014) the authors set out at p. 1018 the factors I consider in determining whether it is appropriate to appoint a receiver. These are:*

*(a) Whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;*

*(b) The risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;*

*(c) The nature of the property;*

*(d) The apprehended or actual waste of the debtor's assets;*

*(e) The preservation and protection of the property pending judicial resolution;*

*(f) The balance of convenience to the parties;*

*(g) The fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;*



*(h) The enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;*

*(i) The principle that the appointment of a receiver is extraordinary relief that should be granted cautiously and sparingly;*

*(j) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;*

*(k) The effect of the order on the parties;*

*(l) The conduct of the parties;*

*(m) The length of time that a receiver may be in place;*

*(n) The cost to the parties;*

*(o) The likelihood of maximizing return to the parties; and*

*(p) The goal of facilitating the duties of the receiver.*

[Emphasis added]

35. The Court emphasized that “considerable weight” can be given to the fact that the security documents provide for the appointment of a receiver:

*27 The authors further note that a court can, when it is appropriate to do so, place considerable weight on the fact that the creditor has the right to instrument - appoint a receiver. In *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 7023 (S.C.J.) (CanLII) the court granted the application of the Bank of Montreal for the court-appointment of a receiver over the assets of Sherco Properties Inc., finding at paragraph 42 that:*

*[42] Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver upon default, this has the effect of relaxing the burden on the applicant seeking to have the receiver appointed. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Limited v. Chetwynd Motels Limited*, 2010 BCSC 477 (CanLII); *Freure Village*, supra; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616 (CanLII) and *Bank of Montreal v.**

*Carnivale National Leasing Ltd. and Carnivale Automobile Ltd.,  
2011 ONSC 1007 (CanLII).*

[Emphasis added]

36. After weighing the above factors, and noting that a provision for the appointment of a receiver in the loan documents strongly supports an appointment, the Court concluded that it was just and convenient to appoint a receiver to oversee the sale of a portion of the respondent's cattle herd.
37. It is not essential for a creditor to establish irreparable harm if a receiver is not appointed. It is also not necessary for a creditor to "check all of the boxes" with respect to the above referenced factors, as noted by the Court in *Royal Bank of Canada v. Eastern Infrastructure Inc.*, 2019 NSSC 243 (**Book of Authorities, Tab 6**), at paragraph 53:

*[53] It is not necessary to "check all the boxes" with respect to the factors noted in Enterprise Cape Breton in order for the Plaintiff to succeed. Indeed, not all of these factors will be applicable to every case. Those that do apply in a given situation will also vary to some extent in the weight to be assigned to them. Conversely, in some cases, there will be additional factors which may militate for or against the remedy sought. The list is not exhaustive.*

38. In *Eastern Infrastructure*, the Court considered the following in determining whether a receivership order should be granted:
- (a) the nature of the receivership sought;
  - (b) whether the companies were "insolvent persons" within the meaning of the BIA; and
  - (c) whether the relief sought was "just or convenient".
39. In the present matter, 459NSL seeks the court-appointment of Deloitte as receiver. The distinction between a court-appointed and private appointed receiver was discussed by the Court in *Crown Jewel Resort Ranch, supra* (at para 40) (**Book of Authorities, Tab 3**):

*The authors of The 2013-2014 Annotated Bankruptcy and Insolvency Act comment at page 1018 that there is an important distinction between the duties and obligations of a receiver and manager privately appointed under the provisions of a security*

document and those of a receiver and manager appointed by court order. A privately appointed receiver and manager is not acting in a fiduciary capacity; it need only ensure that a fair sale is conducted of the assets covered by the security documents and that a proper accounting is made to the debtor. A court-appointed receiver and manager, on the other hand, is an officer of the Court and acts in a fiduciary capacity with respect to all interested parties. Further, a court-appointed receiver derives its powers and authority wholly from the order of the court appointing it. It is not subject to the control and direction of the parties who had it appointed, or of anyone, except the Court. Given the significant unsecured debt owed to both ECBC and the Atlantic Canada Opportunity Agency, as set out at paragraphs 9 and 10 of the Affidavit of Steve Lane, a court-appointed receiver will more adequately and appropriately consider the interests of these, as well as potentially other, unsecured creditors and therefore the appointment by way of a court order is more appropriate in these particular circumstances.

[Emphasis added]

40. In that case, the Court approved the appointment of receiver of the respondents' tourist resort business.
41. The Court in *Eastern Infrastructure* considered the above-quoted passage from *Crown Jewel Resort Ranch*, and continued as follows (at para 41):

[41] Obviously, there are myriad creditors beside RBC in this case. We have heard of lien claimants, and significant amounts owed pursuant to both HST and WCB legislation, to name just some. This would, in my view, tend to favour a court appointed receiver, accountable to the court, who will be able to offer protection to all of the various interests involved, as opposed to one appointed privately by the Plaintiff pursuant to its security documents. To be fair (and to repeat), this is in accord with RBC's position.

[Emphasis added]

42. 459NSL submits that the court-appointment of Deloitte as receiver and manager of the SFFC Group is in the best interest of 459NSL and the other creditors of the SFFC Group taken as a whole. Court appointment will allow Deloitte to assist in stabilizing SFFC's operations while 459NSL and Deloitte undertake a sales process in respect of the SFFC Group and their business. If appointed, Deloitte will be best positioned to consider and protect all of the various interests and stakeholders of the SFFC Group. Deloitte will also

provide confidence to stakeholders, including the shareholders of the SFFC Group, that a sale of the SFFC Group or their business (in which 459NSL is anticipated to be a bidder) is conducted in a fair and impartial manner.

43. In *Romspen Investment Corporation v 1514904 Ontario Ltd*, 2010 ONSC 832 (**Book of Authorities, Tab 5**), the applicant commenced an application for the appointment of a receiver pursuant to s. 243(1) of the BIA in respect of its first mortgage over the real properties and a security interest over the personal property of all the respondents. The property involved the development of a subdivision and the Court noted that time and money were needed to make the property ready for market. The Court found that the developer was under-capitalized and did not have the resources to put towards the debt (at para 15).
44. The Court employed a just and convenient assessment and stated the following at paragraphs 16 and 17:

*16     The just and convenient assessment involves consideration of the interests of lender and borrower. The wrap around financing in 2006 was such that the respondent had to know at the time that in the event of default and enforcement a receiver would be advanced. The number and nature of properties, the subdivision agreements, the involvement of the municipality, the second mortgage suggests that enforcement on a piecemeal basis is contraindicated. The fact that the second mortgagee under the direction of a guarantor to the instant indebtedness supports the appointment suggests that they, too, have seen equity evaporate and are concerned that this development is near or past the point of repayment in full. The principals and investors in the second mortgagee are familiar with the Almonte market and their support for the application is a significant factor.*

*17     The developer respondents are insolvent. They owe more than \$1K and are unable to pay. The first mortgage has been in default since July 2008. The developer respondents are unable to allocate any proceeds of commercial rent to the secured creditors as the rent is consumed by monthly expenses of operation.*

[Emphasis added]

45. The Court appointed the receiver, finding at paragraph 19:

*19     In the instant case as opposed to the circumstances in Fisher/Nusbaum there is advantage to bringing in a receiver to direct the resolution of the outstanding debt. The status quo is untenable even in the*

*short term. There is a daily erosion of equity if there is any. If there is not, it is the second and unsecured lenders who are being compromised. A receiver is a significant intrusion but is clearly the most efficient in a difficult situation. It does not mean the end of the development. It does result in an orderly liquidation of assets bearing in mind the best interest of all parties and when required subject to court approval. The respondent developer is not precluded from obtaining alternate financing. The representation made is that the developer may be able to implement a refinance in 30 days.*

[Emphasis added]

46. 459NSL submits that the above authorities establish the test for the appointment of a receiver pursuant to s. 243(1) of the BIA.

#### The Judicature Act

47. As set forth above, section 243 of the BIA provides for an appointment of a receiver where the Court considers it just and convenient to do so. Notwithstanding the BIA, s. 43(9) of the *Judicature Act* allows for the appointment of a receiver pursuant to provincial law.
48. Section 43(9) of the of the *Judicature Act* provides as follows (**Book of Authorities, Tab 10**):

*43(9) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Supreme Court, in all cases in which it appears to the Supreme Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Supreme Court thinks just, and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Supreme Court thinks fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained, under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.*

[Emphasis added]

49. Accordingly, section 43(9) of the *Judicature Act* allows the Court to appoint a receiver if it considered by the court to be “just or convenient”. It is submitted that the test for the appointment of a receiver pursuant to the BIA (being “just and convenient”) and the *Judicature Act* (being “just or convenient”) are substantially the same, and that it is both

just and convenient that Deloitte be appointed receiver and manager with the powers set out in the draft Order filed with this application.

Relationship between 459NSL and the SFFC Group

50. As set out in the Stevens Affidavit, the ultimate shareholders of 459NSL are also shareholders of the SFFC Group (and the companies have some common officers and directors). These shareholders determined that it was necessary to acquire the Credit Facilities and Security from BNS in order to ensure that SFFC would continue as a going concern. 459NSL respectfully submits that this relationship with the SFFC Group does not prevent it from seeking the appointment of a receiver over the SFFC Group.
51. In *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, 2012 ONSC 2788 (**Book of Authorities, Tab 1**) the Ontario Superior Court of Justice considered an application for the appointment of a receiver and an order approving the immediate sale of the debtor's property to a third party. The Court noted that the distinctive feature of the application was that the applicant secured creditor, debtor and proposed purchaser were all related entities, sharing common ownership (at para 1).
52. The Court declined to appoint a receiver or approve the proposed sale, concluding that there was no need for the court-appointment of a receiver (at para 34). The Court made the following comments at paragraph 25:

*[25] In the present case the applicant, 9-Ball, possesses under section 5.2(a) of its General Security Agreement with TLS the power to appoint a private receiver. Given the very close relationship between the secured creditor and the debtor, no prospect exists of resistance to the appointment of a private receiver. As the narrative disclosed, on the day 9-Ball delivered its BIA section 244 notice TLS waived the 10-day notice period. Moreover, 9-Ball is the only secured creditor of TLS: no complexity of secured claims exists which necessitates the court-appointment of a receiver to ensure that the company's affairs are managed with an even-hand for the benefit of all contending claimants. Further, TLS has no employees and only a handful of contract consultants. This is not a case where some threat to "turn off the lights" would result in a significant loss of jobs, necessitating the appointment of a receiver to bring stability to a company's operations. In sum, the circumstances typically necessitating the appointment of a receiver by the court are not present in this case,*

*and the applicant did not include in its materials specific evidence identifying the need for a court order in order to ensure the receiver could do its job.*

53. It is submitted that the within matter can be distinguished from the circumstances in *9-Ball Interests*. While the shareholders of 459NSL are also shareholders of the SFFC Group, they are two of many shareholders of the SFFC Group and do not hold a controlling interest in any of the SFFC Group. Further, 459NSL did not originate the loans to the SFFC Group, having acquired BNS' arms-length credit facilities and security with the SFFC Group in the face the SFFC Group's liquidity crisis and looming demands for repayment from BNS. Without the proposed receivership, it is anticipated that the SFFC Group will have no choice but to shutter operations.
54. The decisions in *Lemare Lake Logging Ltd v 3 L Cattle Company Ltd*, 2013 SKQB 278 (**Book of Authorities, Tab 4**) (aff'd in part 2014 SKCA 35, [2014] 6 WWR 440, rev'd on other grounds *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.*, 2015 SCC 53) and *Urbancorp Management Inc. (Re)*, 2021 ONSC 3593 (**Book of Authorities, Tab 7**) each dealt with a receivership application by a non-arm's length party to the debtor.
55. In *Urbancorp Management*, the Court considered a bankruptcy application made by a CCAA monitor and a competing receivership application made by a non-arm's length secured creditor. The Court allowed the bankruptcy application and refused the receivership application, noting that the only practical purpose of the of the receivership would be to assess the secured creditor's claim (as the debtor was not operating a business) and that this could be better done in a bankruptcy given the non-arm's length relationship (paras 14, 30 – 31).
56. In *Lemare Lake Logging*, the Court refused a receivership application in the context of secured creditor and debtor corporations that were owned by family members. The Court refused the application for a variety of reasons, including that the secured creditor had not complied with *The Saskatchewan Farm Security Act* and had not proved the insolvency of the debtor. The non-arm's length nature of the parties was not a reason for the refusal of the receivership.



57. While the receivership applications in each of the foregoing cases was refused in the particular circumstances of the matter, it is submitted that there was no suggestion from the Courts in these decisions that a non-arm's length party cannot be the beneficiary of a receivership application. In the within matter, 459NSL respectfully submits that it is entitled to seek the appointment of a receiver over the SFFC Group, provided that it is just and convenient to do so.

#### Application of Test for Appointment of Receiver

58. It is submitted that the Stevens Affidavit establishes the insolvency of the SFFC Group.

59. With respect to whether the appointment of the receiver is "just and convenient", 459NSL submits that the factors considered by the Courts in the above cases weigh in favour of the granting of the receivership Order sought. In particular, and as set out in greater detail in the Stevens Affidavit:

- (a) 459NSL holds the first priority security over the real and personal property of the SFFC Group, and has the right to appoint a receiver pursuant to its security;<sup>1</sup>
- (b) the SFFC Group is in default of its obligations under the Credit Facilities and Security, and 459NSL's Demand letters and Notices of Intention to Enforce a Security have expired;
- (c) both the SFFC Group and 459NSL will suffer irreparable harm if no order is granted, as without the relief sought and the assistance of Deloitte, the SFFC Group will be forced to euthanize its remaining fish, resulting in the loss of its only revenue stream;
- (d) the appointment of Deloitte as receiver and manager will allow it to run the SISP;

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<sup>1</sup> See, for example, section 5.2(a) of the Debenture granted by SFFC (Stevens Affidavit, para 47(a), Exhibit 8) and section 12 of the General Security Agreement granted by SFFC (Stevens Affidavit, para 47(d), Exhibit 11).



- (e) the appointment of Deloitte as receiver and manager will allow for SFFC Group's property, including its remaining fish, to be preserved and protected pending the outcome of the proposed SISP (or failing that, a liquidation);
  - (f) Deloitte, as an officer of the Court, will provide transparency and reassurance to creditors that the restructuring and/or liquidation of the property will be handled expeditiously and in a commercially reasonable manner; and
  - (g) the SFFC Group does not object to the appointment of Deloitte as receiver and manager.
60. 459NSL submits that the appointment of Deloitte as receiver and manager will allow the SFFC Group to stabilize business operations until SFFC's remaining fish can be supplied to customers in September 2024. As set out in the Stevens Affidavit, the shareholders of the SFFC Group who control 459NSL are not prepared to continue to fund the operations of SFFC by making shareholder loans to the company. Further, it does not appear that any of the other shareholders of the SFFC Group are prepared to support its operations. As such, should the receivership be granted, the proposed SISP offers the best chance for SFFC's business to continue long-term.
61. SFFC's primary asset and only source of revenue are its live fish. As set out above, the Court in *Linden Leas, supra* (**Book of Authorities, Tab 2**) appointed a receiver over the respondent's main asset, a cattle herd. In doing so, the Court noted that (at para 29)
- [29] The cattle herd is an ever-changing group of living assets. By its nature, it requires intensive monitoring, handling and care, by trained or experienced personnel in order to ensure its maximum value. Realistically, this monitoring must be done by the Fosters, although it could be under the auspices of a court-appointed receiver.*
62. It is the intention of 459NSL that the SFFC Group will continue to care for and grow its remaining fish during the course of the receivership, with the assistance of Deloitte. As set out in the Stevens Affidavit, 459NSL will continue to fund the operations of the SFFC by providing funding to Deloitte, which in turn will support SFFC's continuing operations. It is submitted that this is the best approach to ensure to continued operation of SFFC's business in the circumstances. Further, given the nature of SFFC's primary asset (i.e., its

remaining fish), Deloitte will benefit from the protections afforded to a receiver in the Receivership Order.

63. It is anticipated that Deloitte will implement a SISP in order to properly capitalize SFFC or complete a sale of the SFFC Group (or their business) as a going concern. The proposed SISP will be conducted in a manner that is both timely and fair to the SFFC Group, 459NSL and SFFC Groups other creditors, and offers the best chance for SFFC's business to continue long-term.
64. In *Crown Jewel Resort, supra* (**Book of Authorities, Tab 3**), the Court identified that the appointment of a receiver does not necessarily dictate the financial end of the debtor (at para 42):

*Finally, the authors note at p. 1024 of The 2013-2014 Annotated Bankruptcy and Insolvency Act that the court's appointment of a receiver does not necessarily dictate the financial end of the debtor. In Romspen Investment Corp. v. 1514904 Ontario Ltd. et al. (2010), 2010 CarswellOnt 2951, 67 C.B.R. (5<sup>th</sup>) 231 (Ont. S.C.J.) the court commented at paragraph 32:*

*[32] The court's appointment of the Receiver does not dictate the end of this development nor the financial end necessarily of the Debtors. Some receiverships are terminated upon presentment of an acceptable plan of refinancing or after a sale of some but not all assets. Time will be necessary for the Receiver to determine value and appropriately market the subject properties. During this time, the Debtors are entitled to continue to seek out prospective lenders or identify potential purchasers, with the qualification that they cannot usurp the role of the Receiver. Other than the cost of the Receiver, there is no existing or imminent harm beyond the potential future risk of the Receiver obtaining court approval of an improvident sale. Market value versus a proposed sale price will form the very argument on the approval motion. It is premature to argue irreparable harm at this time.*

[Emphasis added]

65. 459NSL seeks the appointment of Deloitte as receiver and manager with the aim of continuing the SFFC Group's business as a going-concern, both during the course of and following the receivership and SISP.
66. As described in the Stevens Affidavit, the operations of the SFFC Group cannot continue without additional operating capital in order to allow SFFC to grow its remaining fish to maturity (re-starting the company's revenue stream). Without the assistance of 459NSL and the proposed receivership, SFFC will be forced to euthanize its remaining fish, eliminating any hope of material recovery for creditors and other stakeholders. The ownership and business of the SFFC Group need to be restructured such that the SFFC Group has an ownership structure that is able and willing to provide the necessary working capital for the business. As the Court stated in *Romspen, supra*, at paragraph 19, "the status quo is untenable even in the short term" (**Book of Authorities, Tab 5**). 459NSL submits that the proposed receivership is the best option in a difficult situation for the SFFC Group.
67. Considering all of the above factors, 459NSL submits that it is both just and convenient that Deloitte be appointed receiver and manager with the powers set out in the draft Order filed with the application documents.

#### Form of Draft Order & Borrower Powers

68. The draft Order is similar in form to other Orders issued by this Honourable Court. For ease of reference, we have provided the Court with a blackline version of the draft Order showing that it is in substantially the same form as the Court's precedent form of Order. A copy of that blackline is attached to these submissions as **Schedule "A"**.
69. With respect to the funding of the receivership, 459NSL submits that proposed borrowing amount and receiver's borrowing charge set out in the draft Order is reasonable and appropriate in the circumstances. As set forth in the Stevens Affidavit, 459NSL has funded the critical expenses of SFFC to date by way of protective disbursements under the Security. The Security expressly allows for such protective disbursements to be made. For example, the Debenture granted by SFFC allows 459NSL to preserve, renovate,

reconfigure, repair, protect and maintain the collateral charged thereby,<sup>2</sup> and the General Security Agreement granted by SFFC allows 459NSL to hold, insure, repair, process, maintain, protect, preserve, prepare for disposition and dispose of the collateral charged thereby.<sup>3</sup>

70. 459NSL's protective disbursements were intended as a stop-gap until a receivership order is obtained, as 459NSL seeks the protections afforded by the receivership order and receiver's borrowing charge. As set out in the Stevens Affidavit, 459NSL has made protective disbursements with the intent of preserving SFFC's business as a going concern for the benefit of creditors and other stakeholders. SFFC intends to continue funding SFFC's operations during the course of the receivership by funding the receiver's borrowings. In this manner, SFFC is able to make protected advances to SFFC with the input and oversight from Deloitte, as receiver. 459NSL submits that:

- (a) the proposed borrowing amount is reasonable and necessary in light of the SFFC's continuing operating costs (as set out in the Stevens Affidavit at paras 63 – 64); and
- (b) the other creditors of the SFFC Group (other than 459NSL) will not be prejudiced by such borrowings and the borrowing charge, and instead are likely to benefit from such borrowings and the borrowing charge (as these will preserve SFFC's business as a going concern and maximize potential returns for creditors).

#### **IV. CONCLUSION**

71. Based on the forgoing, it is respectfully requested that Deloitte be appointed as Receiver and Manager over all of the assets, undertakings, and properties of the SFFC Group, pursuant to s. 243 of the BIA and s. 43(9) of the *Judicature Act*, with the powers and responsibilities set out in the draft Order.

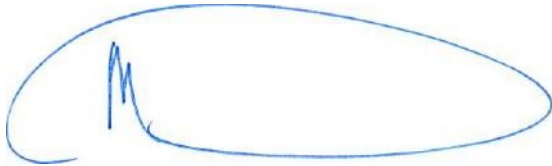
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<sup>2</sup> See section 5.2(e), Stevens Affidavit, para 47(a), Exhibit 8).

<sup>3</sup> See section 10, Stevens Affidavit, para 47(d), Exhibit 11).

The Honourable Justice Darlene Jamieson  
March 26, 2024  
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**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

A handwritten signature in blue ink, consisting of a large, loopy oval shape with a smaller, more defined signature inside it.

Maurice P. Chiasson, K.C.

MPC/DRW/lms

Enclosures

c. Service List

**Schedule "A"**

~~20~~2024

Hfx No.

SUPREME COURT OF NOVA SCOTIA  
IN BANKRUPTCY AND INSOLVENCY

In the Matter of the Receivership of \_\_\_\_\_ (the “Company”) TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc.

Between:

4595756 Nova Scotia Limited

Applicant

and

TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc.

Respondents

**Respondent**

Receivership Order

Before the Honourable \_\_\_\_\_ in chambers  
in Chambers:

The Applicant<sup>1</sup> started this proceeding for an order, under both subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA”) and the equitable jurisdiction of this Court as partially codified by s. 43(9) of the *Judicature Act*, to appoint \_\_\_\_\_ Deloitte Restructuring Inc. as receiver and manager (in such capacities, the “Receiver”) without security, of all<sup>2</sup> of the assets, undertakings and properties of ~~the Respondent~~ TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc. (collectively, the “Companies”) acquired for, or used in relation to a business carried on by the ~~Respondent~~ Companies.

The Receiver satisfies the requirement for appointment without security in Rule 73.07(a).

<sup>1</sup>~~Subsection 243(1) of the BIA provides that the Court may appoint a receiver “on application by a secured creditor”.~~

<sup>2</sup>~~If this is not a receivership of all of the assets of the Respondent, remove the reference to “all assets” and define or describe the specific assets under mandate, perhaps by including a schedule.~~

~~[Different first page setting changed from off in original to on in modified.]~~

On motion of the Applicant the following is ordered:

### Service

1. ~~4-~~The time for service of the Notice of Application and the supporting materials is hereby ~~[abridged/~~abridged and validated]<sup>3</sup> so that the application is properly returnable today and further service thereof is hereby dispensed with.

### Appointment

2. Pursuant to the equitable jurisdiction, subsection 43(9) of the *Judicature Act*, Rule 73 – Receiver, and subsection 243(1) of the BIA, the Receiver is hereby appointed ~~[receiver/~~receiver and manager], without security, of all of the assets, undertakings, and properties of the RespondentCompanies acquired for, or used in relation to a business carried on by the RespondentCompanies, including all proceeds thereof (the “Property”).

### Receiver’s Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without limiting the generality of the foregoing, the Receiver is hereby empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
  - (b) to change locks and security codes, relocate the Property to safeguard it, engage independent security personnel, take physical inventories, and place insurance coverage;
  - (c) ~~[~~to manage, operate, and carry on the business of the RespondentCompanies, including the powers to enter into any agreements, incur and pay 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 Respondent;<sup>4</sup>Companies;
  - (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 RespondentCompanies, or any part or parts thereof;
  - (f) ~~f-~~to receive and collect all monies and accounts now owed or hereafter owing to the RespondentCompanies and to exercise all remedies of the

<sup>3</sup> If service is effected in a manner other than as authorized by the *Civil Procedure Rules* or the *Bankruptcy and Insolvency General Rules*, use in appropriate circumstances.

<sup>4</sup> Use only if a receiver manager is appointed. Re letter the rest of the paragraphs otherwise.

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RespondentCompanies in collecting such monies, including, without limitation, to enforce any security held by the RespondentCompanies;

- (g) ~~(f)~~—to settle, extend, or compromise any indebtedness owing to the RespondentCompanies;
- (h) ~~(g)~~—to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver'sReceiver's name or in the name and on behalf of the RespondentCompanies, for any purpose pursuant to this Order;
- (i) ~~(h)~~—to undertake environmental or workers' health and safety assessments of the Property and operations of the RespondentCompanies;
- (j) ~~(i)~~—to initiate, prosecute, and continue the prosecution of any proceedings and to defend proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings, which authority extends to appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) ~~(j)~~—to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;
- (l) ~~(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 in its discretion may deem appropriate;
- (m) ~~(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 any transaction not exceeding \$~~\_\_\_\_\_~~100,000, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under section 60 of the *Personal Property Security Act* shall not be required.

- (n) ~~(m)~~—to sell the right, title, interest, property, and demand of the RespondentCompanies in and to the Property at the time the RespondentCompanies granted a security interest or at any time since, free of all claims including the claims of subsequent encumbrancers bound as named

respondents, bound as parties joined as unnamed respondents, or bound under Rule 35.12;

- (o) ~~(n)~~ to report to, meet with, and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) ~~(e)~~ to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- (q) ~~(p)~~ to apply for any permits, licences, approvals, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the ~~Respondent~~Companies;
- (r) ~~(q)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Respondent~~Companies including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the ~~Respondent~~Companies;
- (s) ~~(r)~~ to exercise any shareholder, partnership, joint venture, or other rights which the ~~Respondent~~Companies may have; and
- (t) ~~(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 authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the ~~Respondent~~Companies, and without interference from any other Person.

#### **Duty to Provide Access and Co-Operation to the Receiver**

4. The ~~Respondent~~Companies, all of ~~its~~their ~~respective~~ current and former directors, officers, employees, agents, accountants, legal counsel, and shareholders, and all other persons acting on ~~its~~their instructions or behalf, and all other individuals, firms, corporations, governmental bodies, or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being ~~"Persons"~~ and each being a ~~"Person"~~) shall forthwith advise the Receiver of the existence of any Property in such ~~Person's~~Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the ~~Receiver's~~Receiver's request.
5. All Persons 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 ~~Respondent~~Companies, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the ~~"Records"~~) in that ~~Person's~~Person's possession or control, and shall, subject to their right to seek a variation of this Order, provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities

relating thereto, provided however that nothing in this paragraph 5 or in paragraph 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 the privilege attaching to solicitor-client communication or due to 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 independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to their right to seek a variation of this Order, 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 onto paper, 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 in its discretion require including 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 RespondentCompanies or the Property**

8. No Proceeding against or in respect of the RespondentCompanies 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 RespondentCompanies or the Property are hereby stayed and suspended pending further order of this Court.

#### **No Exercise of Rights or Remedies**

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entities against the RespondentCompanies, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the RespondentCompanies to carry on any business which the Respondent isCompanies are not lawfully entitled to carry on, (ii) exempt the Receiver or the RespondentCompanies from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Applicant or the Receiver, or leave of this Court.

### Personal Property Lessors

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the ~~Respondent is~~Companies are a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the registered interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or an interest therein.

### No Interference with the Receiver

11. Subject to paragraph 16 of this Order related to the ~~Respondent's~~Companies' employees, 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 ~~Respondent~~Companies, without written consent of the Receiver or leave of this Court.

### Continuation of Services

12. All Persons having oral or written agreements with the ~~Respondent~~Companies or statutory or regulatory mandates for the supply of goods 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 ~~Respondent~~Companies are hereby 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 ~~Respondent's~~Companies' 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 ~~Respondent~~Companies 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.
13. The Receiver, in its sole discretion, may, but shall not be obligated to, establish accounts or payment on delivery arrangements with suppliers in its name on behalf of the ~~Respondent~~Companies for the supply of goods 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 ~~Respondent~~Companies, or any of them, if the Receiver determines that the opening of such accounts is appropriate.
14. No creditor of the ~~Respondent~~Companies, or any of them, shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Respondent~~Companies.

### Receiver to Hold Funds

15. 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

16. All employees of the **Respondent Companies** shall remain the employees of the **Respondent Companies** until such time as the Receiver, on the **Respondent's Companies'** behalf, may terminate the employment of such employees or they resign in accordance with their employment contract. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined by a court or tribunal of competent jurisdiction.
17. Pursuant to paragraph 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, 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"**) as permitted at law. 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. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. 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 **Respondent Companies**, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## Limitation on Environmental Liabilities

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession, or management (separately or collectively, **"Possession"**) of any of the Property that might, or any part thereof, which may 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 legislation, statute, regulation or, rule of law or equity respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999* or the *Nova Scotia Environment Act* (collectively, the **"Environmental Legislation"**), provided however

that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

### Limitation on Liability

19. ~~\_\_\_\_\_~~ Deloitte Restructuring Inc. and, without limitation, a director, officer, or employee of the Receiver, shall incur no liability or obligation as a result of its appointment as the Receiver or the carrying out the provisions of this Order, or in the case of any party acting as a director, officer, or employee of the Receiver so long as acting in such capacity, save and except for any negligence, breach of contract, or actionable misconduct on the part of such party, or in respect of the Receiver's obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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 ~~Receiver's~~ Accounts

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$~~\_\_\_\_\_~~ 150,000.00 (the "~~Administrative Charge~~") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative 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 subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>5</sup>
21. The Receiver and its legal counsel shall pass its accounts from time to time before a judge of this Court or a referee appointed by a judge.
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, expenses and disbursements, including legal fees and disbursements, incurred at the normal 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.

### Receiver's Indemnity Charge

23. The Receiver shall be entitled to and is hereby granted a charge (the "**Receiver's Indemnity Charge**") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order including the management, operation, and carrying on of all or part of the business of ~~a Respondent~~ the Companies, under the *Bankruptcy and Insolvency Act*, or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.
24. The ~~Receiver's~~ Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or

~~<sup>5</sup>Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

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otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

### **Allocation of Costs**

25. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses, and liabilities of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge, and the ~~Receiver's~~Receiver's Borrowings Charge, as defined below, and, unless the Court orders otherwise, all such costs, fees, expenses, and liabilities shall be paid in the following manner:
- (a) Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
  - (b) Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
  - (c) Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

### **Funding of the Receivership**

26. The Receiver be at liberty and it is hereby 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 \$1,600,000.00, or such greater amount as this Court may by further order authorize, at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments, including interim payments, required or permitted to be made by this Order, including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the ~~"Receiver's~~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 Indemnity Charge, the Administrative Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
27. Neither the ~~Receiver's~~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 on seven days' notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule ~~"A"~~"A" hereto (the ~~"Receiver's~~Receiver's **Certificates**) for any amount borrowed by it pursuant to this Order.
29. 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~~Receiver's Certificates.





Schedule "A"

CERTIFICATE NO. \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

THIS IS TO CERTIFY that \_\_\_\_\_ Deloitte Restructuring Inc., the receiver ~~and manager~~ (the "Receiver") of the ~~assets, undertakings and properties~~ of \_\_\_\_\_ ~~(the "Company")~~, TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc. (collectively, the "Companies") acquired for, or used in relation to the business carried on by the ~~Company~~ Companies, including all proceeds thereof (collectively, the "Assets"), appointed by Order of the Nova Scotia Supreme Court (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, ~~20~~, 2024 (the "Order") in the matter having court file number Hfx 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.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded daily after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

Such principal sum with interest thereon is, by the terms of this 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 Assets in priority to the secured 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 such Assets in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.

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.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Assets as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the \_\_\_\_ day of \_\_\_\_\_, ~~20~~, \_\_\_\_\_, 2024.

\_\_\_\_\_  
Deloitte Restructuring Inc., solely in its capacity as Receiver ~~and Manager~~ of the ~~Applicant~~ Companies and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

<b>Summary report:</b>	
<b>Litera Compare for Word 11.5.0.74 Document comparison done on 3/26/2024 2:29:16 PM</b>	
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<b>Intelligent Table Comparison:</b> Active	
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<b>Modified DMS:</b> nd://4141-9062-0239/4/Receivership Order - TCAS Holdings.docx	
<b>Changes:</b>	
Add	134
Delete	153
<del>Move From</del>	0
Move To	0
Table Insert	0
<del>Table Delete</del>	0
Table moves to	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>287</b>