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October 14, 2025

**Via Hand Delivery & Email**

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

Justice Bodurtha:

**Re: In the Matter of the Receivership of 4499127 Nova Scotia Limited – Hfx No. 547515**

**Application to Appoint Receiver: Tuesday, October 21, 2025 at 9:30 a.m.**

We are counsel for Express Mortgage Corporation Limited (“**EMC**”), the Applicant in the above noted matter.

EMC has filed an application seeking 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 BDO Canada Limited (“**BDO**”) as Receiver and Manager over all of the assets, undertakings, and properties of 4499127 Nova Scotia Limited (the “**Company**”) acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof.

EMC brings this application as the Company is in default of its obligations to EMC under its loan agreement and security. As of October 1, 2025, the Company was indebted to EMC in the amount of \$2,540,781.80 plus EMC's costs of enforcement, with daily interest and costs continuing to accrue.

4137-5464-7904

If the application for an order appointing EMC as Receiver and Manager of the Company is granted, EMC then immediately seeks one or more orders for the following relief:

- (a) approving the sale of certain real property of the Company, to be completed by BDO in its capacity as Receiver and Manager (the “**Proposed Sales**”), contemplated by agreements of purchase of sale respecting the real property of the Company located at 5 Summer Hill Place, Lot 33-A and 10 Summer Hill Place, Lot 30-B (the “**Subject Properties**”), and authorizing and directing the BDO to complete the Proposed Sales in accordance with the terms of the respective agreements of purchase of sale;
- (b) approving the vesting and transfer of each of the Properties, free and clear of any encumbrances and claims; and
- (c) approving the actions and activities of BDO as set out in the BDO Report (as hereinafter defined).

Please accept the following as the submissions of EMC in relation to the hearing scheduled for October 21, 2025.

**I. FACTS**

2. EMC relies on the facts and evidence set out in the following:
  - (a) the affidavit Jo-Anne Nozick, President of EMC, an unsworn copy of which is filed with these submissions, with the original sworn copy to be filed in advance of the hearing (the “**Nozick Affidavit**”);
  - (b) the solicitor’s affidavit of David Wedlake sworn October 10, 2025 (the “**Solicitor’s Affidavit**”), outlining the various interests registered against the Company; and
  - (c) the Pre-Filing Report of BDO (the “**BDO Report**”) dated October 14, 2025, filed in support of this application and outlining BDO’s actions as privately appointed receiver of the Company.

Credit Facilities and Security

3. The Company is in the business of residential real estate development. More particularly, the Company is developing a residential community known as 'The Willows' located in Upper Onslow, Colchester County, Nova Scotia (the "**Residential Development**"). The Residential Development consists of one-level town homes marketed as a '55-plus community'.

BDO Report, para 8  
Nozick Affidavit, para 10

4. The Company is currently the registered owner of eighteen (18) properties in connection with the Residential Development (collectively, the "**Properties**"). Details of the Properties are more particularly set out in the Nozick Affidavit and Solicitor's Affidavit.

Nozick Affidavit, paras 25 & 27  
Solicitor's Affidavit, paras 5-24, Exhibits 2-19

5. EMC provided loans to the Company in order to finance the acquisition and development of the Properties as part of the Residential Development. A history of the loans and advances made by EMC to the Company is set out at paragraphs 12 - 24 of the Nozick Affidavit.

6. The Company's current indebtedness to EMC is subject to an amended and restated loan agreement dated July 31, 2024 (the "**2024 A&R Loan Agreement**"). Pursuant to the 2024 A&R Loan Agreement, the Company was indebted to EMC in respect of loans and advances, interest and other charges, less certain repayments made by the Company, for a total loan balance owing of \$2,986,500 (the "**Loan**"). Under the 2024 A&R Loan Agreement, interest accrues on the amount of \$2,258,000 at a rate of 12% per annum, calculated daily and payable monthly not in advance.

Nozick Affidavit, para 22

7. The security and guarantees held by EMC for the Loan are set out at paragraphs 14, 18, 21 and 23 of the Nozick Affidavit. EMC's security includes a collateral mortgage charging each of the Properties.

BDO Report, para 1

### Events of Default

8. The Company failed to make the required interest payments under the 2024 A&R Loan Agreement for January and February 2025. In addition to these missed payments, EMC had concerns about the Company's lack of reporting to EMC and its ability to complete the Residential Development generally.

Nozick Affidavit, para 31

9. Following the above-noted missed interest payments, EMC engaged its counsel to review its security position and its options regarding the Loan. It was during this review that EMC learned that (i) a mortgage and assignment of rents and lease in favour of Graysbrook Capital Ltd. ("**Graysbrook**"), and (ii) certain builder's lien claims, had been registered against title to some of the Properties, contrary to the terms of the 2024 A&R Loan Agreement.

Nozick Affidavit, para 32

10. On March 11, 2025, EMC demanded repayment from the Company and personal guarantors pursuant to the 2024 A&R Loan Agreement. In addition to the demand letters, Notices of Intention to Enforce Security under section 244 of the BIA were issued to the Company and personal guarantors.

Nozick Affidavit, para 33, Exhibits 22-24

11. As set out in the demand letters, as of March 10, 2025, the Company was indebted to EMC in the amount of \$2,421,260.60.

Nozick Affidavit, para 35

### Post-Demand Matters

12. Following the issuance of the demands, additional claims for builder's liens were registered against the Properties. EMC believed that the Company could not continue to develop and sell the Properties in the normal course.

Nozick Affidavit, paras 36 - 38

13. On or about June 10, 2025, EMC engaged BDO to act as a privately appointed receiver of the Company's Properties pursuant to EMC's security.

Nozick Affidavit, para 39, Exhibit 25  
BDO Report, para 1

14. Following their appointment as private receiver, BDO visited the Residential Development and took possession of certain assets of the Company, including any residential homes at the Residential Development that were completed or partially completed. Following BDO's attendance at the Properties and initial review of the books and records of the Company, BDO determined, among other things, that:

- (a) Of the 18 Properties, three of the Properties have residential homes that are either fully complete or nearly completed and have occupancy permits, six Properties have residential homes that are in various stages of construction, and the remaining Properties are either foundation ready or have a foundation poured (but with no other construction or development).
- (b) The Company's credit facilities with Graysbrook were in arrears, and that Graysbrook has demanded repayment of its credit facilities from the Company.
- (c) The Company's insurance on the Properties had lapsed for non-payment.
- (d) The Company was in arrears to various creditors, including Nova Scotia Power and the Canada Revenue Agency.

Nozick Affidavit, para 41

15. Following BDO's appointment as receiver, EMC instructed BDO to, among other things, take and maintain possession and care of the Properties and to develop and implement and sales strategy for the Properties.
16. BDO first attempted to identify potential en-bloc purchasers for the Residential Development. After no offers were obtained, EMC and BDO decided that BDO would list the Properties for sale with an independent residential realtor.

Nozick Affidavit, paras 42-43  
BDO Report paras 13-15

Appointment of Private Receiver

17. The Company had effectively ceased business operations in January 2025, and BDO has maintained control of the Company's Properties and other assets since its appointment as private receiver of the Company in June 2025.
18. The Company remains significantly indebted to EMC under the 2024 A&R Loan Agreement. The Company also remains indebted to Graysbrook, which also holds security over the Company's assets (including the majority of the Properties).
19. Seven creditors of the Company have filed claims for builder's liens against the Company's Properties which exceed \$730,000. Details of the builder's lien claims registered against the Properties are set out in paragraph 37 of the BDO Report.
20. Given the existing defaults of the Company, its failure to provide any reasonable plan for repayment of the Loan, and security interests and builders' lien claims against the Properties, EMC believes the appointment of a receiver and manager is necessary to complete a liquidation of the assets of the Company for the benefit of its creditors. Appointing BDO as court-appointed receiver and manager of the Company will allow it to complete the Proposed Sales, and any future sales of the Company's Properties and other assets
21. BDO has agreed to act as Receiver and Manager over the assets, undertakings, and properties of the Company.

Nozick Affidavit, Exhibit 26

Sale Approval

22. BDO listed the majority of the Properties for sale with a realtor on July 10, 2025, and the remaining properties were listed on August 8, 2025.

BDO Report, paras 16-17

23. BDO has entered into agreements of purchase and sale for the Proposed Sales. As set out in the BDO Report:

(a) with respect to 5 Summer Hill Place, the agreement of purchase and sale (the “**5 Summer Hill Purchase Agreement**”) for this property was entered into following its listing with a realtor by BDO; and

BDO Report, para 20, Appendix A

(b) with respect to 10 Summer Hill Place, the agreement of purchase and sale (the “**10 Summer Hill Purchase Agreement**” and collectively with the 5 Summer Hill Purchase Agreement, the “**Purchase Agreements**”) for this property was entered into with purchasers that had previously entered into a purchase agreement with the Company for the property (however the Company was unable to close this transaction due to due to builder’s liens registered against the property).

BDO Report, para 24, Appendix C

24. Details of the Purchase Agreements and applicable Properties are set out in paragraphs 16-28 of the BDO Report.

25. If BDO is appointed as court-appointed Receiver and Manager over the assets, undertakings, and properties of the Company, EMC immediately seeks orders approving the Proposed Sales for the reasons set out in paragraph 26 the BDO Report.

26. EMC has reviewed the sales price and Purchase Agreements for the Proposed Sales and supports the Proposed Sales.

#### BDO's Activities

27. The activities of BDO since its appointment as private receiver of the Company by EMC are set out in paragraph 13 of the BDO Report.

**II. ISSUES**

28. The initial issue for determination on this application is whether this Honourable Court appoint BDO as Receiver and Manager over all of the assets, undertakings and property of the Company pursuant to s. 243(1) of the BIA and s. 43(9) of the *Judicature Act*.
29. If the Receivership Order is granted, the following issues are then to be determined:
- (a) Should this Honourable Court approve the Proposed Sales; and
  - (b) Should this Honourable Court approve the activities of BDO in its role as private receiver, as set out in the BDO Report?

**III. LAW AND ARGUMENT**

**Notice and Service Requirements**

30. 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 16**):

*(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.*

31. With respect to the time period set out in s. 243(1.1) of the BIA, EMC 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) notice was sent on March 11, 2025.

Nozick Affidavit, para 33, Exhibits 22-24

32. As EMC 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 17**), 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]

33. Section 3 of the BIA Rules (**Book of Authorities, Tab 17**) 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.
34. EMC submits that the BIA Rules allow for notice of these proceedings to be served via email on four days’ notice. EMC submits that it has complied with the above provisions such that proper notice of these proceedings has been given. An Affidavit of Service will be filed in advance of the application hearing with respect to same.

## Issue 1 – Appointment of a Receiver

### Legal Test for the Appointment of a Receiver

35. Section 243(1) of the BIA provides for the appointment of a receiver as follows (**Book of Authorities, Tab 16**):

*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.*

36. Therefore, this Honourable Court may appoint a receiver where it is “just and convenient” to do so.

37. 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 1**), 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 5**), 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]

38. 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]

39. 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.
40. 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 12**), 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.*

[Emphasis added]

41. 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”.
42. In the present matter, EMC seeks the court-appointment of BDO as receiver and manager. The distinction between a court-appointed and private appointed receiver was discussed by the Court in *Enterprise Cape Breton Corporation v. Crown Jewel Resort Ranch Inc.*, 2014 NSSC 420 (at para 40) (**Book of Authorities, Tab 6**):

*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. [...]*

[Emphasis added]

43. In that case, the Court approved the appointment of a receiver over the respondents’ tourist resort business.

44. In *First National Financial GP Corporation v 3291735 Nova Scotia Limited*, 2018 NSSC 235 (**Book of Authorities, Tab 7**), the applicant was a first priority secured creditor seeking the appointment of a receiver over the property, assets, and undertakings of the respondent. The Court considered relevant authorities that interpret elements of the “just and convenient” test for appointing a receiver, stating as follows at paragraph 14:

[14] *In Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 1996 CanLII 8258 (ON SC), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Ont. Ct. J. (Gen.Div.)), Blair J. (as he then was) dealt with a similar situation in which the bank held security that permitted the appointment of a private Receiver or an application to court to have a court-appointed Receiver. The legal principles involved were summarized as follows:*

10 *The Court has the power to appoint a receiver or receiver and manager where it is 'just or convenient' to do so: the Courts of Justice Act, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally Third Generation Realty Ltd. v. Twigg (1991) 6 C.P.C. (3d) 366 at pages 372-374; Confederation Trust Co. v. Dentbram Developments Ltd. (1992), 9 C.P.C. (3d) 399; Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd. (1984), 1984 CanLII 2343 (SK QB), 54 C.B.R. (N.S.) 18 at page 21. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed: Swiss Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R. (3d) 49.*

[Emphasis added]

45. The Court considered the following factors in reaching its conclusion that it was just and convenient to appoint a receiver (paragraph 12):
- (a) the applicant held first priority security over the respondent's real and personal property;
  - (b) the respondent was in default of its obligations to the applicant;

- (c) the applicant made demand for payment on the respondent and issued a Notice of Intention to Enforce Security pursuant to the BIA;
  - (d) both the demand letter and the Notice of Intention to Enforce Security had expired, without payment being made;
  - (e) the applicant was in a position to enforce its security as against the respondent should it choose to do so;
  - (f) the appointment of a receiver would allow for the respondent's property to be preserved and protected pending liquidation; and
  - (g) a receiver, as an officer of the court, would provide transparency and reassurance to the respondent's creditors that the liquidation of the property would be handled expeditiously and in a commercially reasonable manner.
46. In *Romspen Investment Corporation v 1514904 Ontario Ltd*, 2010 ONSC 832 (**Book of Authorities, Tab 9**), 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).
47. 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]

48. 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]

49. EMC submits that the above authorities establish the test for the appointment of a receiver pursuant to s. 243(1) of the BIA. An application of the legal test to the facts in this matter will be set out below.

#### The Judicature Act

50. 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.
51. Section 43(9) of the of the *Judicature Act* provides as follows (**Book of Authorities, Tab 18**):

*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]

52. 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 in view of the events of default and demands as set out in the Savoie Affidavit, it is both just and convenient that BDO be appointed receiver and manager with the powers set out in the draft Order filed with this application.

#### Application of Test for Appointment of Receiver

53. It is submitted that the Nozick Affidavit and BDO Report establish the insolvency of the Company.
54. With respect to whether the appointment of the receiver is “just and convenient”, EMC 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 Nozick Affidavit and BDO Report:
- (a) EMC holds the first priority security over the real property of the Company, and has the right to appoint a receiver pursuant to its security;
  - (b) the Company is in default of its obligations under the 2024 A&R Credit Agreement;
  - (c) the demand letter and Notice of Intention to Enforce a Security were sent on March 11, 2025 and have expired;

- (d) the value of EMC's security continues to erode, as principal, interest and property taxes continue to accrue;
  - (e) any enforcement and sale by EMC of the Company's assets in the face of undetermined CRA arrears poses a significant risk for EMC of a priority claim being made by CRA against any proceeds paid to EMC (as allowed by the Federal Court of Appeal in *Toronto-Dominion Bank v. Canada*, 2020 FCA 80 (**Book of Authorities, Tab 15**));
  - (f) the Company has ceased operations;
  - (g) prior to BDO taking possession of the Properties, the Company's insurance on the Properties had lapsed;
  - (h) the appointment of BDO as Receiver and Manager will allow for the Company's property to be preserved and protected pending liquidation;
  - (i) given the security and multiple claims for builder's liens registered against the Properties, that it is unlikely that BDO can complete the Proposed Sales as a privately-appointed receiver of the Company. Instead, a court-appointed receivership is required in order to complete the Proposed Sales and any future sales of the Company's Properties; and
  - (j) there are numerous creditors with security interests or liens registered against the Properties. If appointed as Receiver and Manager, BDO, as an officer of the Court, will have a fiduciary duty to all such creditors which in turn will provide transparency and reassurance to the Company's creditors that the liquidation of the property will be handled in a fair and commercially reasonable manner.
55. In summary, the Company is in default under the 2024 A&R Loan Agreement and security. The Company has ceased operations, and its Residential Development is only partially completed. There are multiple secured creditors and builder's lien claimants with an interest in the Properties. Given this, it is extremely unlikely that the Company could obtain additional financing in order to complete the Residential Development, or sell any of its

completed Properties outside of a court-supervised proceeding. It is submitted that there is no viable alternative to the Company's creditors than a court-appointed receivership.

56. There are numerous parties with encumbrances registered on title to the Properties. The Company is also in arrears for amounts due to the Canada Revenue Agency and the property taxes for the current tax year are outstanding, which may form a priority claim against the Properties. The appointment of BDO as a neutral officer of the Court to facilitate the sale of the Properties will allow for a single proceeding to deal with these claims in an orderly, transparent, and efficient manner for the benefit of the Company's creditors.
57. In *Royal Bank of Canada v Eastern Infrastructure*, 2019 NSSC 297 (**Book of Authorities, Tab 13**), Rosinski, J. made the following comments in considering whether to appoint a receiver at paragraph 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.*

It is respectfully submitted that such reasoning is applicable in the current case.

58. Considering all of the above factors, EMC submits that it is both just and convenient that BDO be appointed Receiver and Manager with the powers set out in the draft Order filed with the application documents.

#### Form of Draft Order

59. The draft Order is similar in form to other Orders issued by this Honourable Court. For ease of reference, a blackline version of the draft Order is attached at **Appendix "A"**, showing that it is in substantially the same form as the Court's precedent form of Order.
60. It is submitted that the proposed borrowing charge and administrative charge are reasonable given the nature of the Company's assets.

## Issue 2 – Sale Approval

61. As noted above, if BDO is appointed as Receiver and Manager, EMC is seeking approval of the Proposed Sales. EMC supports the approval of the Proposed Sales.
62. The Proposed Sales are known as a “quick-flip” or pre-packed transaction, as they involve the appointment of a receiver for the immediate consummation of the sale of the assets of the debtor, in this instance the sale of the Subject Properties upon the terms of the respective Purchase Agreements. While “quick-flip” or pre-packed transactions are subject to heightened scrutiny from the Court, it is respectfully submitted that the Proposed Sales are demonstrably just and reasonable.
63. In *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, 2013 ONSC 7009 (**Book of Authorities, Tab 4**), the receiver, immediately following appointment as receiver, brought a motion for an order approving entry by the receiver into three asset purchase agreements for the assets of the debtor companies and approving the transactions as contemplated by the agreements. Morawetz J. noted that it is settled law that where a Court is asked to approve a sales process and transaction in a receivership context, the Court is to consider the *Soundair* principles (at paragraph 31).
64. Upon finding that the *Soundair* principles had been satisfied, Morawetz J. then considered whether the test for approval changed in a “quick-flip scenario”, adopting his comments made in *Tool-Plas Systems Inc., Re*, 2008 CarswellOnt 6258 (**Book of Authorities, Tab 14**), at paragraphs 33 and 34:

*33 Where court approval is being sought for a so-called "quick flip" or immediate sale (which involves, as is the case here, an already negotiated purchase agreement sought to be approved upon or immediately after the appointment of a receiver without any further marketing process), the court is still to consider the Soundair Principles but with specific consideration to the economic realities of the business and the specific transactions in question. In particular, courts have approved immediate sales where:*

*(a) an immediate sale is the only realistic way to provide maximum recovery for a creditor who stands in a clear priority of economic interest to all others; and*

*(b) delay of the transaction will erode the realization of the security of the creditor in sole economic interest.*

*Fund 321 Ltd. Partnership v. Samsys Technologies Inc. (2006), 21 C.B.R. (5th) 1 (Ont. S.C.J.); Bank of Montreal v. Trent Rubber Corp. (2005), 13 C.B.R. (5th) 31 (Ont. S.C.J.).*

34 In the case of *Re Tool-Plas*, I stated, in approving a "quick flip" sale that:

A "quick flip" transaction is not the usual transaction. In certain circumstances, however, it may be the best, or the only, alternative. In considering whether to approve a "quick flip" transaction, the court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the "quick flip" transaction would realistically be any different if an extended sales process were followed.

*Tool-Plas Systems Inc., Re (2008), 48 C.B.R. (5th) 91 (Ont. S.C.J.).*

[Emphasis added]

65. Marowetz J. approved the order, noting that the sales process was fair and reasonable, and was the only means of providing the maximum realization of the assets in the circumstances (at paragraph 37).
66. The Ontario Superior Court of Justice considered a "quick-flip" credit bid sale in a proposed receivership of debtors that operated four retirement residences in *Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc.*, 2013 ONSC 6905 (**Book of Authorities, Tab 8**). The creditor had made demands for payment and had given section 244 notices. In addition, a monitor had been appointed by the creditor to review and report on the financial and operational condition of the debtors. In light of the failure of the marketing efforts by the debtors to produce satisfactory offers to purchase the retirement residences, the creditor applied for the appointment of the monitor as receiver over the properties in order to effect a credit bid sale for them. In conjunction with this application, the primary secured creditor incorporated a purchaser company and sought an order approving a purchase and sale agreement entered into with the monitor, now receiver, for the assets of the debtors.

67. In approving both orders, the Court stated at paragraph 10:

*10 "Quick flip" or "pre-pack" transactions are becoming more common in the Ontario distress marketplace. In certain circumstances, a "quick flip" involving the appointment of a receiver and then immediately seeking court approval of a "pre-packaged" sale transaction may well represent the best, or only, commercial alternative to a liquidation. In such situations the court still will assess the need for a receiver and the reasonableness of the proposed sale against the standard criteria set out in decisions such as *Bank of Nova Scotia v. Freure Village on Clair Creek* and *Royal Bank v. Soundair Corp.*, respectively. However, courts will scrutinize with especial care the adequacy and the fairness of the sales and marketing process in "quick flip" transactions:*

*Part of the duty of a receiver is to place before the court sufficient evidence to enable the court to understand the implications for all parties of any proposed sale and, in the case of a sale to a related party, the overall fairness of the proposed related-party transaction. As stated by Morawetz J. in the *Tool-Plas Systems Inc.* case:*

*[T]he Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the quick flip transaction would realistically be any different if an extended sales process were followed.*

*The need for such a robust and transparent record is heightened even more where the proposed purchase involves a credit bid by one of the debtor's secured creditors, the practical effect of which usually is to foreclose on all subordinate creditors.*

68. It is respectfully submitted that the decisions in *Elleway*, *Tool-Plas*, and *Montrose*, *supra*, provide support for the Proposed Sales immediately upon the appointment of BDO as Receiver and Manager of the Company. As identified in *Elleway*, approval of the requested Order requires consideration of the *Soundair* principals, as well as consideration economic realities of the business and the specific transaction in question. In *Montrose*, *supra*, the Court noted the need to consider the adequacy and the fairness of the sales and marketing process in "quick-flip" transactions.

69. It is respectfully submitted that the Proposed Sales, for the reasons set out in the BDO report, satisfy specific considerations noted above, as:
- (a) the sales process was conducted, and the Purchase Agreements were entered into, by BDO;
  - (b) 5 Summer Hill was listed for sale with a realtor, being the sales method most commonly used for selling residential real estate;
  - (c) the proposed purchasers of 10 Summer Hill previously made an offer to purchase this property from the Company prior to the private receivership. While the 10 Summer Hill Purchase Agreement is for a lesser price than the original purchase agreement, such reduction is reasonable given that the property is now being sold on an “as is, where is” basis, without appliances, and without a structural defect warranty;
  - (d) BDO also considered alternative courses of action, as BDO first sought an en-block offer for the Residential Development;
  - (e) the sales price for each Subject Property is adequate in light of the appraised value of each property;
  - (f) the Subject Properties are not a unique asset and, accordingly, given the offers received to date, the appraised value of the Subject Properties, and that holding costs continue to accrue, there is little basis to expect that an extended sales process would result in a materially better recovery for creditors for the Subject Properties; and
  - (g) the Subject Properties are only two of the Properties, and so there remains opportunity for further recovery for creditors.
70. It is submitted that further delay will place the current offers for the Subject Properties at risk, jeopardizing the potential return for EMC and other creditors of the Company.

71. BDO recommends that the Proposed Sales be approved. It is submitted that the “quick-flip” or pre-packed transaction nature of the Proposed Sales is reasonable in the circumstances.

The Test for Approval – *Soundair* Principles

72. The principles for the Court to consider on a motion or application for the approval of a sale of assets by a receiver are well established and set out in *Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205 (C.A.) (**Book of Authorities, Tab 10**). These principles are:
- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which offers are obtained; and
  - (d) whether there has been unfairness in the working out of the process.
73. Section 247(b) of the BIA (**Book of Authorities, Tab 16**) requires that a receiver deal with any property of an insolvent person in a “commercially reasonable manner”. In *Royal Bank of Canada v. 2M Farms Ltd.*, 2017 NSSC 105 (**Book of Authorities, Tab 11**), Moir J. stated the following in respect of the test set forth in *Soundair, supra* (at paras 5 – 8):

*The receiver submits that Royal Bank of Canada v. Soundair Corporation 1991 CanLII 2727 (ON CA), [1991] O.J. 1137 (CA) is the leading case on approval of sales. It emphasizes: (1) sufficiency of the sales effort, (2) interests of the parties, (3) efficacy or integrity of the sale process, and (4) fairness in working out the process.*

*The Bankruptcy and Insolvency Act was amended after Soundair. The amendment established a national receivership and included a provision on the general duties of receivers, which must now be kept in mind when approval of a receiver sale is sought. An appointment of a receiver to enforce security is now usually made under both the national receivership provisions and provincial law (both statutory and common law).*

*As stated by Justice Wood at paragraph 14 of ECBC v. Crown Jewel Resort Ranch Inc., 2014 NSSC 420 (CanLII): “it is not the role of the Court to review in detail every element of the process*

*followed by the Receiver". Under s. 247(b) of the Bankruptcy and Insolvency Act, a receiver must deal with the receivership property in a commercially reasonable manner. Justice Wood followed long standing authorities when he held, also at paragraph 14 of Crown Jewel, that the court will consider fairness of the process that led to the sale.*

*As I see it, the general obligation under s. 247(b) is the touchstone for approval of a sale by the receiver when the receiver has been appointed under the Bankruptcy and Insolvency Act, alone or in combination with provincial law. Commercial reasonableness is the touchstone for approval. The case law tells us that commercial reasonableness includes fairness, efficacy, integrity, and sufficiency of the sale process. It also tells us that the interests of the parties have to be borne in mind.*

[Emphasis added]

74. It is submitted that the factors set out in *Soundair, supra*, should be considered with a view to the overall commercial reasonableness of the Proposed Sales.
75. Galligan J.A. examined each of the four factors separately in *Soundair* and the subsequent jurisprudence has tended to focus on the factors in isolation.

#### Factor 1 – Sufficient Effort

76. With respect as to whether BDO has made sufficient effort to get the best price, there is little in the jurisprudence following *Soundair* to suggest that, absent an egregious lack of effort on the part of the receiver or a deficiency in a key component of the general sales process, the Courts will quash a sale based on the “sufficient effort” factor.
77. It is submitted that the BDO Report shows that sufficient effort has been made by BDO in its role as private receiver to seek the best price for the Subject Properties, as:
  - (a) the 5 Summer Hill Purchase Agreement was entered into with an arm’s length party following the property’s listing for sale with a realtor;
  - (b) the 10 Summer Hill Purchase Agreement was entered into with arm’s length parties that has previously made an offer to purchase this property from the Company prior to the private receivership (when the property was listed for sale with a realtor by the Company);

- (c) BDO considered alternative courses of action, first seeking an en-block offer for the Residential Development; and
- (d) BDO obtained independent appraisals for the Subject Properties which support their proposed sales prices.

BDO Report, paras 14-19

78. It is further submitted that an extended sales process would simply result in the continued listing of the Subject Properties with a residential realtor, such that it cannot be realistically expected that a materially better offer would result from this process given the sufficient marketing of the Subject Properties and that the sales prices are supported by the appraisals. As a result, it is respectfully submitted that sufficient efforts have been made to obtain the best price for the Subject Properties.

#### Factor 2 – The Interests of All Parties

79. The second factor set out in *Soundair*, and the balancing of interests that forms part of this factor, is often addressed by the Courts through an analysis of the fourth factor – fairness.
80. Galligan J.A., in *Soundair*, did provide some additional guidelines in addressing this factor:

*39 It is well established that the primary interest is that of the creditors of the debtor: see Crown Trust Co. v. Rosenberg, supra, and Re Selkirk, supra (Saunders J.). However, as Saunders J. pointed out in Re Beauty Counsellors, supra at p. 244 [C.B.R.], "it is not the only or overriding consideration."*

*40 In my opinion, there are other persons whose interests require consideration. In an appropriate case, the interests of the debtor must be taken into account. I think also, in a case such as this, where a purchaser has bargained at some length and doubtless at considerable expense with the receiver, the interests of the purchaser ought to be taken into account. While it is not explicitly stated in such cases as Crown Trust Co. v. Rosenberg, supra, Re Selkirk (1986), supra, Re Beauty Counsellors, supra, Re Selkirk (1987), supra, and (Cameron), supra, I think they clearly imply that the interests of a person who has negotiated an agreement with a court-appointed receiver are very important.*

[Emphasis added]

81. An acknowledgment of the interest of the purchaser is also provided by Duncan J. in *Bank of Montreal v. Sportsclick Inc.*, 2009 NSSC 354 (**Book of Authorities, Tab 2**) at paragraph 33.
82. In the present matter, it is submitted that the Proposed Sales supports the interests of the Company, its creditors, and the proposed purchasers. EMC, the Company's primary secured creditor, is in support of the Proposed Sales and BDO understands that Graysbrook is generally supportive of the plan to market and sell the Properties. The proposed purchasers wish to complete the transactions pending the outcome of this application. It is further submitted that the Proposed Sales provide a commercially reasonable return for creditors of the Company.
83. BDO intends to hold the proceeds of sale of the Subject Properties in trust pending an order of this Court approving the distribution of such proceeds, further ensuring that all creditors will have the opportunity to assert any claims to the proceeds and limiting any potential prejudice to creditors.
84. Given the foregoing, it is respectfully submitted that the interests of all parties, on balance, favour approval of the Proposed Sales.

### Factor 3 – Efficacy and Integrity of the Process

85. The third factor of efficacy and integrity was addressed by Galligan J.A. in *Soundair*, by reference to the decision of the Nova Scotia Supreme Court, Appeal Division, in *Cameron v. Bank of N.S.*, 1981 CarswellNS 47 (S.C., A.D.):

*43 The importance of a court protecting the integrity of the process has been stated in a number of cases. First, I refer to Re Selkirk, supra, where Saunders J. said at p. 246 [C.B.R.]:*

*In dealing with the request for approval, the court has to be concerned primarily with protecting the interest of the creditors of the former bankrupt. A secondary but important consideration is that the process under which the sale agreement is arrived at should be consistent with commercial efficacy and integrity.*

*In that connection I adopt the principles stated by Macdonald J.A. of the Nova Scotia Supreme Court (Appeal*

*Division) in Cameron v. Bank of N.S. (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), where he said at p. 11:*

*In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement. On the contrary, they would know that other bids could be received and considered up until the application for court approval is heard -- this would be an intolerable situation.*

*While those remarks may have been made in the context of a bidding situation rather than a private sale, I consider them to be equally applicable to a negotiation process leading to a private sale. Where the court is concerned with the disposition of property, the purpose of appointing a receiver is to have the receiver do the work that the court would otherwise have to do.*

86. Galligan J.A. went on to refer to the unreported holding in *Crown Trust Co. v. Rosenberg*:

45 *Finally, I refer to the reasoning of Anderson J. in Crown Trust Co. v. Rosenberg, supra, at p. 124 [O.R.]:*

*While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical.*

[Emphasis added by Galligan J.A.]

...

47 *Before this court, counsel for those opposing the confirmation of the sale to OEL suggested many different ways in which the receiver could have conducted the process other than the way which he did. However, the evidence does not convince me that the receiver used an improper method of attempting to sell the*

*airline. The answer to those submissions is found in the comment of Anderson J. in Crown Trust Co. v. Rosenberg, supra, at p. 109 [O.R.]:*

*The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.*

87. This characterization of the third factor, as ensuring that commercial good-sense be present, was again echoed by Duncan J. in *Sportsclick, supra*, at paragraph 33, and also by Roscoe J.A. writing for the Nova Scotia Court of Appeal in *Edwards v. Edwards Dockrill Horwich Inc.*, 2009 NSCA 37 (**Book of Authorities, Tab 3**) at paragraph 5. So long as the receiver has acted in a commercially reasonable manner in conducting the sale, the efficacy and integrity of the process is intrinsically upheld as a direct result.
88. It is submitted that the requirements of this factor have been met for the following reasons:
- (a) the purchase agreements resulted from the marketing and sale strategy implemented by BDO as private receiver (and for the 10 Summer Hill Property, BDO leveraged the Company's pre-receivership marketing efforts);
  - (b) BDO engaged a reputable independent residential realtor, being the sales method most commonly used for selling residential real estate;
  - (c) the marketing period for the Subject Properties was sufficient to gauge market interest and to obtain the best possible price in the circumstances;
  - (d) BDO obtained independent appraisals for the Subject Properties which support their proposed sales prices;
  - (e) EMC is in support of the sale and BDO understands that Graysbrook is generally supportive of the plan to market and sell the Properties; and
  - (f) as noted by Macdonald J.A. in *Cameron, supra*, and adopted by Galligan J.A. in *Soundair, supra*, the reality that it is possible that a higher offer could be received if the property were subject to an extended sales process is, on its own, not reason to deny the approval of Proposed Sales.

Factor 4 – Unfairness

89. As stated by Galligan J.A. in *Soundair*, the Court must also decide whether the sales process was fair (para 49). Roscoe J.A. for the Nova Scotia Court of Appeal in *Edwards*, *supra*, in noting the trial decision of MacAdam J., referenced the decision in *Rosenberg*, *supra*:

*5 Justice MacAdam found that there was no excess of power, fraud or lack of bona fides on behalf of the receivers and therefore the question was whether the receivers' report was reasonable. He also adopted the test established in Crown Trust Co. v. Rosenberg (1986), 39 D.L.R. (4th) 526 (Ont. H.C.) where Anderson, J., stated at page 548:*

*. . . The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise. The court ought not to embark on a process analogous to the trial of a claim by an unsuccessful bidder for something in the nature of specific performance. The court should not proceed against the recommendations of its Receiver except in special circumstances and where the necessity and propriety of doing so are plain. Any other rule or approach would emasculate the role of the Receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval.*

*In all of this it is necessary to keep in mind not only the function of the court but the function of the Receiver. The Receiver is selected and appointed having regard for experience and expertise in the duties which are involved. It is the function of the Receiver to conduct negotiations and to assess the practical business aspects of the problems involved in the disposition of the assets.*

*and at page 550:*

*It is equally clear, in my view, though perhaps not so clearly enunciated, that it is only in an exceptional case that the courts will intervene and proceed contrary to the Receiver's recommendations if satisfied, as I am, that the Receiver has acted reasonably, prudently and fairly and not arbitrarily.*

*And further at page 551:*

*If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it*

*would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.*

90. Accordingly, while maintaining the ability to quash the sale, the jurisprudence indicates that courts make great effort to confirm that such power will only be wielded in “the most exceptional circumstances”, when unfairness is obvious and fundamentally detrimental. It is respectfully submitted that there can be no fundamental or obvious unfairness shown in this matter.
91. Based on the foregoing, it is submitted that BDO has acted in a commercially reasonable manner and that the Proposed Sales satisfy the *Soundair* principles.

#### Approval and Vesting Order

92. With respect to the proposed sale of the Purchased Assets, BDO requests an approval and vesting order. The authority of this Honourable Court to grant such an order pursuant to section 243(1)(c) of the BIA was considered by Rosinski, J. in *Royal Bank of Canada v Eastern Infrastructure*, 2019 NSSC 297 (**Book of Authorities, Tab 13**), where the Court stated at para 7:

*[7] Lemare Logging was released one year after Justice Wood made his comments in Crown Jewel. Although Nova Scotia does not have express provincial legislation giving the court jurisdiction to make such vesting orders, it is clear that in appropriate circumstances courts can rely on s 243(1)(c) BIA to do so. In Dianor, the court cited Crown Jewel at para. 78, noting that “...the case law on vesting orders in the insolvency context is limited.”*

[Emphasis added]

93. Regarding the appropriate circumstances to make an approval or vesting order, Rosinski J. cited at paragraph 8 the test set out in *Soundair*, as approved in Nova Scotia by Duncan J. in *Sportsclick*, *supra*.

94. Given the foregoing, it is submitted that the proposed form of approval and vesting orders requested by BDO in this matter, which are in a form similar to other orders granted by this Honourable Court since the decision of Rosinski, J. in *Eastern Infrastructure, supra*, are appropriate in the circumstances.
95. The registered interests against the Subject Properties include claims for builder's liens. As set out in the BDO Report, BDO is continuing to investigate the validity of such claims (and BDO continues to review the nature and priority of creditor's claims to the assets of the Company generally). It is submitted that it is appropriate for this Honourable Court to approve the sale of the Subject Properties, free and clear of liens and encumbrances (including any builder's lien claims), as BDO intends to hold the proceeds of sale of the Subject Properties in trust pending a further order of this Court approving the distribution of proceeds (*2M Farms, supra*, at paras 54 - 55). The priority of claims to the sale proceeds of the Subject Properties may be addressed at a future motion for the distribution of the sale proceeds.

### **Issue 3 – Approval of the Pre-Filing Report**

96. The actions and activities of BDO in its capacity as private receiver are set out in the BDO Report at paragraph 11. EMC submits that the actions and activities as listed in the BDO Report are reasonable and appropriate and should be approved by this Court.

### **IV. RELIEF SOUGHT**

97. Based on the foregoing, it is respectfully submitted that the relief sought on this application be granted in the form or substantially the same form of orders filed with these submissions.

Yours respectfully,



David Wedlake

RDW/lms

Enclosures

c. Service List

## APPENDIX "A"

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~~20~~2025

Hfx No.

547515

**SUPREME COURT OF NOVA SCOTIA  
IN BANKRUPTCY AND INSOLVENCY**

In the Matter of the Receivership of \_\_\_\_\_ (the "**Company**") 4499127  
Nova Scotia Limited

Between:

Express Mortgage Corporation Limited

**Applicant**

and

4499127 Nova Scotia Limited

**Respondent**

**Receivership Order**

Before the Honourable \_\_\_\_\_ in  
~~chambers~~ Justice John Bodurtha 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 \_\_\_\_\_ BDO Canada Limited 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~~ 4499127 Nova Scotia Limited (the "**Company**") acquired for, or used in relation to a business carried on by the ~~Respondent~~ Company.

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

On motion of the Applicant the following is ordered:

**Service**

~~<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.]

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 ~~Respondent~~Company acquired for, or used in relation to a business carried on by the ~~Respondent~~Company, including all proceeds thereof (the ~~“Property”~~“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 ~~Respondent~~Company, 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;~~Company;
  - (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 ~~Respondent~~Company, or any part or parts thereof;
  - (f) ~~f.~~to receive and collect all monies and accounts now owed or hereafter owing to the ~~Respondent~~Company and to exercise all remedies of the ~~Respondent~~Company in collecting such monies, including, without limitation, to enforce any security held by the ~~Respondent~~Company;

<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.

- (g) ~~(f)~~—to settle, extend, or compromise any indebtedness owing to the ~~Respondent~~Company;
- (h) ~~(g)~~—to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~Receiver's name or in the name and on behalf of the ~~Respondent~~Company, 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 ~~Respondent~~Company;
- (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~~Company;
- (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 ~~Respondent~~Company in and to the Property at the time the ~~Respondent~~Company 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) ~~(p)~~ 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~~Company;
- (r) ~~(q)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Respondent~~Company including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the ~~Respondent~~Company;
- (s) ~~(r)~~ to exercise any shareholder, partnership, joint venture, or other rights which the ~~Respondent~~Company 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~~Company, and without interference from any other Person.

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

4. The ~~Respondent~~Company, all of its 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"~~"Persons" and each being a ~~"Person"~~"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~~Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the ~~"Records"~~"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 ~~55~~ or in paragraph ~~66~~ 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 RespondentCompany or the Property**

8. No Proceeding against or in respect of the RespondentCompany 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 RespondentCompany 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 RespondentCompany, 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 RespondentCompany to carry on any business which the RespondentCompany is not lawfully entitled to carry on, (ii) exempt the Receiver or the RespondentCompany 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 RespondentCompany is 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 ~~46~~16 of this Order related to the ~~Respondent's~~Company's 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~~Company, 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~~Company 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~~Company 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~~Company's 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~~Company 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~~Company 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, or any of them~~Company, if the Receiver determines that the opening of such accounts is appropriate.
14. No creditor of the ~~Respondent~~Company 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~~Company.

### **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 Company shall remain the employees of the Respondent Company until such time as the Receiver, on the Respondent's Company's 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 Company, 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. BDO Canada Limited 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 Company, under the ~~Bankruptcy and Insolvency Act~~ BIA, 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 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:

~~<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".~~

- (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 \$~~\_\_\_\_\_~~150,000.00, 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 Certificates"~~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.

### General

30. The Receiver may from time to time make a motion for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the ~~Respondent~~Company.
32. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All



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Schedule "A"

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

THIS IS TO CERTIFY that BDO Canada Limited, the receiver ~~and manager~~ (the "Receiver") of the ~~assets, undertakings and properties~~ of 4499127 Nova Scotia Limited (the "Company"), ~~acquired for, or used in relation to the business carried on by the Company, including all proceeds thereof (collectively, the "Assets"), appointed by Order of the Nova Scotia Supreme Court (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 2025~~ (the "Order") in the matter having court file number Hfx No. 547515, 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\_\_\_\_, 2025.

BDO Canada Limited, solely in its capacity as Receiver ~~and Manager~~ of ~~the Applicant~~ 4499127 Nova Scotia Limited and not in its personal capacity

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

| *[Link-to-previous setting changed from on in original to off in modified.]*

Title:

| <b>Summary report:</b>  |            |
|---|------------|
| <b>Litera Compare for Word 11.8.0.56 Document comparison done on<br/>10/15/2025 10:52:12 AM</b> |            |
| <b>Style name:</b> Default Style  |            |
| <b>Intelligent Table Comparison:</b> Active   |            |
| <b>Original filename:</b> Receivership Order - TCAS Holdings 4141-9062-0239<br>v.1.doc          |            |
| <b>Modified filename:</b> Receivership Order - 4499127NSL 4147-7806-0384<br>v.3.docx            |            |
| <b>Changes:</b>   |            |
| Add   | 138        |
| <del>Delete</del>   | 157        |
| <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>295</b> |