2025 01H _____

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

BETWEEN:

THE BANK OF NOVA SCOTIA

APPELLANT

AND:

OCEAN VIEW FARMS LIMITED

RESPONDENT

NOTICE OF APPEAL

This is notice that the Appellant, The Bank of Nova Scotia (the **Bank**) appeals the order of the Supreme Court of Newfoundland and Labrador.

(1) Information regarding the order under appeal:

(a) The justice who made the order is MacDonald J.

(b) The matter was heard at St John's, Newfoundland and Labrador.

(c) The lower court file number is 2025 01G 4683.

(d) There is no written decision.

(e) The order was made and filed on 15 September 2025.

(2) The subject matter of the appeal is summarized as follows:

(a) The Bank is the senior secured creditor of the Respondent, Ocean View Farms Limited (the **Company**), with a total claim of over $7,600,000. The Company filed an initial application under the *Companies' Creditors Arrangement Act*, RSC 1985 c.C-36, as amended (the **CCAA**) on 4 September 2025 for, among other things, an order approving an interim financing agreement with Libra Finance Company Inc (the **Libra Financing**) and granting a charge in favour of Libra in priority over any secured creditor of the Company.

(b) On 9 September 2025, the Bank filed an interlocutory application for, among other things, an order approving, authorizing, and directing the Company to enter into an interim financing agreement with the Bank as an alternative to the Libra Financing. At the first hearing of the Company's initial application on 11 September 2025, the Bank agreed to an initial order being made under the CCAA and the Company's nominated monitor being appointed, on the basis that the Bank would have an opportunity to prepare a revised interim financing agreement on the same terms as the Libra Financing, which the Bank understood would be approved at the adjourned hearing on 15 September 2025. In advance of the adjourned hearing, the Bank presented a revised interim financing agreement on the same legal and commercial terms as the Libra Financing, save that the Bank's proposed interest rate was lower (the **Bank Financing**). Relevantly to this appeal, both proposals included provisions requiring the lender's approval for the Company to enter into certain transactions or take certain steps in the CCAA proceedings (the **Approval Rights**).

(c) At the 15 September 2025 hearing, and contrary to the Bank's understanding of the arrangements that concluded the prior hearing, the Company opposed the Bank Financing. The court below approved the Libra Financing and rejected the Bank Financing. The order now appealed (the **Charging Order**) was made and filed as of the same day, authorizing and empowering the Company to enter

into the Libra Financing and granting the interim lender a charge on the Company's property in priority to existing secured creditors, including the Bank.

(d) The issue on this appeal is whether the court below erred in applying the legal test and exercising its discretion when it rejected the Bank Financing in favour of the Libra Financing. In particular, the Bank's position is that the court below erred in at least three ways:

(i) First, the court below failed to consider whether the Bank would be materially prejudiced as a result of the priority charge being granted for the Libra Financing, as it was bound to do undersection 11.2(4)(f) of the CCAA. It accordingly made an error in law and exercised its discretion unreasonably.

(ii) Second, the court below treated the Approval Rights included in the Bank Financing as an automatic disqualifying factor to approving the Bank Financing, and accordingly made an error in law and exercised its discretion unreasonably.

(iii) Third, the reasoning of the court below suggests that it proceeded on the basis that the Bank would act unreasonably or not in good faith in exercising any Approval Rights. There was no evidential basis for proceeding on this basis. Accordingly, the court below exercised its discretion unreasonably.

(e) If the court below had considered properly all factors as required by the CCAA and exercised its discretion reasonably in light of the evidence before it, it would have approved the Bank Financing.

(3) The Bank requests:

(a) An order approving, authorizing, and directing the Company to enter into an interim financing agreement with the Bank on the terms presented by the Bank in the court below; directing that the funds advanced under the Libra Financing be repaid from the interim financing agreement with the Bank; and that the Bank be substituted for and take the benefit of the rights granted to the interim lender to the Company under the Charging Order and any subsequent orders continuing or extending the relief granted in the Charging Order from time to time.

(b) Alternatively, an order setting aside the Charging Order (save for paragraph 1), and any subsequent orders continuing the relief granted in the Charging Order from time to time, and remitting the matter to the court below for reconsideration.

(c) Such further or alternative relief that counsel may advise or the Court considers appropriate.

(4) The Court and the parties are advised that:

(a) Paragraph 1 of the Charging Order (extending the stay period) is not being appealed. To the extent that the Court grants the primary relief sought by the Bank, only the portions of the Charging Order pertaining to the Libra Financing are being appealed.

(b) This is an appeal in an uncompleted matter. It is appropriate to proceed at this time because the issues raised on appeal are discrete and capable of being dealt with in parallel to the underlying CCAA proceedings without causing any prejudice to the parties.

Dated at St John's, Newfoundland and Labrador, this 24th day of September, 2025.

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