Court File No. CV-23-00001092-0000

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

FARM CREDIT CANADA

Applicant

and

SIF AMBER (3.5) PROJECTS LP AND
SIF AMBER (3.5) PROJECTS GP INC.

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE COURT OF JUSTICE ACT, R.S.O. 1990, C.C.43, AS AMENDED

# FACTUM OF THE RECEIVER

April 10, 2024


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Grant Thornton Limited


**TO: THE SERVICE LIST**

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# FACTUM OF THE RECEIVER

## PART I: INTRODUCTION

1. On September 18, 2023, this Court granted an order (the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c C.43, as amended ("**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended ("**CJA**") appointing Grant Thornton Limited ("**GTL**") as receiver and manager (in such capacity, "**Receiver**"), without security, of all the assets, undertakings and properties of SIF Amber (3.5) Projects LP ("**SIF LP**") and SIF Amber (3.5) Projects GP Inc. ("**SIF GP**") (collectively, "**SIF**" or the "**Debtors**") acquired for, or used in relation to a business carried on by SIF (the "**Property**"). This Court also granted an order approving the sale investment and solicitation process (the "**SISP Order**") on the same date.

2. The Receivership Order and SISP Orders were held in abeyance until October 19, 2023, at which point the Receiver initiated the sale process contemplated in the SISP Order.

3. This factum is filed in support of a motion by the Receiver for, among other things:

   (a) an order (the "**Approval and Vesting Order**"), among other things, approving the sale transaction pursuant to an asset purchase agreement dated March 5, 2024 (the "**Sale Agreement**" or the "**APA**") between the Receiver and Sirius Web Labs Inc. (the "**Purchaser**") for the sale of the Property (the "**Sale Transaction**"), and sealing the Confidential

Appendices relating to the Sale Transaction until after the Sale Transaction has been completed;

(b) an order (the “**Ancillary Relief and Discharge Order**”), among other things:

(i) approving the First Report of the Receiver, dated April 10, 2024 (the “**First Report**”) and the activities of the Receiver;

(ii) authorizing the Receiver to make an assignment into bankruptcy in respect of SIF and authorizing GTL to act as trustee in bankruptcy in respect thereto;

(iii) approving of the proposed distribution to Farm Credit Canada (“**FCC**”), less receivership related costs, fees, Final Fees and priority payables (where applicable) up to the total amount of the indebtedness owed to FCC, provided that such distributions shall not be made until the Debtors have been subject to assignments in bankruptcy;

(iv) approving the Receiver’s interim statement of receipts and disbursements dated March 27, 2024 (the “**Receiver’s Interim R&D**”);

(v) approving the fees and disbursements of the Receiver and its independent legal counsel, including the Final Fees (as described in the First Report);

(vi) discharging the Receiver upon the filing of a certificate confirming that the Receiver has completed all Remaining Matters (as described in the First Report); and,

(vii) releasing the Receiver from any claims which have been raised or which could have been raised in these proceedings against the Receiver, and any and all liability in respect of any act done or default made by GTL, or any acts or omission of GTL in respect of the Properties and its conduct as the Receiver, except for gross negligence and willful misconduct.

4. As described below, the Sale Transaction is the result of extensive marketing efforts by the Receiver. Accordingly, the Receiver believes that the Sale Transaction is fair and reasonable in the circumstances and presents the best available option for the sale of the Property.

5. Following the closing of the Sale Transaction and the completion of the Remaining Matters, the Receiver believes that its mandate will be complete. As such, the Receiver submits that the relief set out in the Ancillary Relief and Discharge Order represents the last significant step in these receiverships proceedings and is appropriate in the circumstances.

**PART II: SUMMARY OF FACTS**

6. The facts underlying this motion are fully set out in the First Report, and are summarized briefly here. Capitalized terms used but not defined herein have the meanings given to them in the First Report.

*Background and Appointment of Receiver*

7. SIF operates five solar installations, which are each installed on the rooftop of an operating farm and subject to an access agreement with each landlord (the "**Landlords**"). The installations are all located near Aylmer, Ontario. Collectively the installations are referred to as the "**Solar Assets**".[1]

8. SIF entered into a Credit Agreement with FCC for the purpose of financing the construction costs related to installing the Solar Assets.[2]

9. FCC issued formal demand for payment and section 244 notices under the BIA on January 24, 2020.[3]

10. Starting on May 15, 2020, FCC entered into a forbearance agreement with SIF, which was extended several times.[4]

11. In August, 2022, FCC engaged GTL as a financial advisor to assist with settlement discussions between FCC and SIF. A settlement agreement was reached in January, 2023, however SIF was unable to fulfill its obligations under the settlement agreement.[5]

12. FCC holds a valid and enforceable first priority security interest over SIF's Property.[6]

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[1] First Report of the Receiver dated April 10, 2024 (the "**First Report**") at para 7, Motion Record of the Receiver ("**Motion Record**"), Tab 2.
[2] Schedule "A" to the Endorsement of Justice Leitch, dated September 18, 2023 at para 2.
[3] Schedule "A" to the Endorsement of Justice Leitch, dated September 18, 2023 at para 5.
[4] Schedule "A" to the Endorsement of Justice Leitch, dated September 18, 2023 at para 3.
[5] Schedule "A" to the Endorsement of Justice Leitch, dated September 18, 2023 at para 6.
[6] First Report at para 28, Motion Record, Tab 2.

13. As of July 10, 2023, SIF owed an aggregate indebtedness to FCC of $3,472,463.81.[7]

14. On September 18, 2023, this Honourable Court granted the Receivership Order and the SISP Order, which were held in abeyance until October 19, 2023.[8]

*IESO Requirement and FIT Contracts*

15. SIF's business is to provide solar generated energy to the local energy grid. Revenue is collected based on government supported feed in tariff ("**FIT**") contracts.[9] The FIT contracts are administered by the Independent Electricity System Operator ("**IESO**"). The FIT contracts are required for the present and future operation of SIF, and the FIT contracts require community participation (the "**IESO Requirement**"). As a result, any successful purchaser of the Solar Assets would need to satisfy the IESO Requirement and receive IESO's consent on the transfer/assignment of SIF's FIT contracts.[10]

16. The Receiver has been in contact with the IESO regarding the transfer/assignment of the FIT Contracts and has been advised that such assignments are a standard process.[11]

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[7] First Report at para 10, Motion Record, Tab 2.
[8] Schedule "A" to the Endorsement of Justice Leitch, dated September 18, 2023 at para 8.
[9] First Report at paras 21-22, Motion Record, Tab 2.
[10] First Report at para 8, Motion Record, Tab 2.
[11] First Report at para 22, Motion Record, Tab 2.

*Sale Process*

17. The SISP Order authorized and directed the Receiver to administer the SISP.

18. Pursuant to the SISP, the Receiver engaged in a broad sale and marketing process in which 77 potential purchasers were identified. The Receiver also advertised the opportunity in The Globe & Mail, the Renewable Energy World e-newsletter and the Insolvency Insider publication.[12]

19. Of the 77 parties the Receiver sent the teaser letter to, 43 expressed an interest in the opportunity and received the non-disclosure agreement ("**NDA**"), and 22 parties signed and returned the NDA to the Receiver and received access to the data room.[13]

20. Ultimately, five parties submitted offers to the Receiver by the bid deadline of February 15, 2024.[14] The Receiver requested the five parties provide 'best and final' offers by March 1, 2024.[15]

21. On March 5, 2024, the Receiver selected Sirius Web Labs Inc. as the successful purchaser, culminating in the execution of an asset purchase agreement (the "**APA**" or "**Sale Agreement**") on the same date.[16]

22. The material terms of the Sale Agreement include:

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[12] First Report at para 13, Motion Record, Tab 2.
[13] First Report at para 14, Motion Record, Tab 2.
[14] First Report at para 14, Motion Record, Tab 2.
[15] First Report at para 15, Motion Record, Tab 2.
[16] First Report at para 16, Motion Record, Tab 2.

(a) **Purchased Assets**: the Purchased Assets consist of all of SIF's rights, title and interest in the Property;

(b) **Deposit**: a deposit of $132,500 was provided, which the Receiver is holding in trust;

(c) **Closing Date**: pursuant to the terms of the Sale Agreement, the Sale Transaction shall close at 10:00 a.m. on the eleventh day following the granting of the Approval and Vesting Order, and with an overall outside closing date of April 30, 2024; and,

(d) **Conditions Precedent**: the sale is conditional, among other things, upon:

(i) the Receiver obtaining Court approval of the Sale Transaction, authorizing the Receiver to complete the Sale Transaction, and the granting of an Approval and Vesting Order; and

(ii) the transfer/assignment of the FIT Contracts, in accordance with the IESO Requirement.[17]

23. The Receiver has confirmed that all conditions precedent other than the transfer/assignment of the FIT Contracts have been satisfied. The Receiver anticipates the condition precedent requiring the transfer/assignment of the FIT Contracts will be satisfied prior to Court approval of the Sale Agreement and Sale Transaction.[18]

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[17] First Report at para 19, Motion Record, Tab 2.
[18] First Report at para 19, Motion Record, Tab 2.

*CRA Claim and the Proposed Bankruptcy*

24. The Receiver is aware of a priority payable claim of approximately $64,000 in HST arrears, including interest charges. The Receiver is not aware of any other priority payables.[19]

25. Considering the anticipated shortfall to FCC resulting from the Sale Transaction's net realization, there is a sensitivity to any and all costs associated with these proceedings. As a result, the Receiver, at the request of FCC, seeks authorization to make an assignment in bankruptcy in respect of SIF and for GTL to consent to act as the trustee in bankruptcy for the purpose of reversing the statutory priority.[20]

*Proposed Distribution*

26. The Receiver is seeking authorization to make a distribution to FCC of any and all proceeds received from the Sale Transaction, up to the total amount of the indebtedness owed to FCC, provided that such distributions shall not be made until the Debtors have been subject to assignments in bankruptcy.[21]

*Receiver's Activities*

27. Since the last appearance in this Court, the Receiver, with the assistance of its counsel and independent legal counsel, has diligently advanced these

[19] First Report at para 29, Motion Record, Tab 2.
[20] First Report at para 30, Motion Record, Tab 2.
[21] First Report at paras 27-32, 41, Motion Record, Tab 2.

receivership proceedings in the interests of the Debtors and their stakeholders, including, among other things, by:

(a) taking possession of the Property on October 25, 2024;

(b) preparing statutory filings pursuant to section 245 and 246(1) of the BIA;

(c) maintaining insurance policies to ensure adequate coverage over the course of these receivership proceedings;

(d) maintaining operational contracts to ensure the Property is properly monitored and maintained over the course of these receivership proceedings;

(e) marketing the Property for sale and negotiating the Sale Transaction; and

(f) coordinating the transfer/assignment of the FIT Contracts with the IESO.[22]

*Fees and Disbursements of the Receiver and its Counsel*

28. The Receivership Order provided that the Receiver would retain independent counsel where, in the Receiver's judgment, it determines that it required independent legal counsel.[23] Otherwise, the Receiver was authorized to retain counsel to the Applicant, which would streamline fees in a situation where the senior secured creditor was expected to experience a significant shortfall.

[22] First Report, paras 13-15, 22 and 36, Motion Record, Tab 2.
[23] Receivership Order dated September 18, 2023 at para 3(d).

29. Since the Receivership Order was granted, the Receiver retained independent legal counsel solely for the purpose of obtaining an independent legal opinion on the validity and enforceability of FCC's security as against the Property.[24]

30. The Receiver and its independent legal counsel maintained detailed records of their professional time and costs. Pursuant to the draft Ancillary Relief and Discharge Order, the Receiver is seeking the approval of its fees and disbursements incurred up to March 31, 2024 in the amount of $126,355.72.[25]

31. In addition, the Receiver plans to hold back $45,000 (inclusive of disbursements and HST) with respect to the Receiver's fees, the fees to be incurred in relation to any bankruptcy and suing as a result of the authority sought for the receiver to cause a bankruptcy filing, as well as the Receiver's legal fees for its independent legal counsel, and for time spent in order to finalize the Receivership Proceedings (the "**Final Fees").** Any unused portion of the holdback for Final Fees will be made available to FCC, should the Court grant an order approving the Final Fees.[26]

*Proposed Discharge and Release*

32. The draft Ancillary Relief and Discharge Order contemplates the Receiver's discharge upon the filing of the Receiver's Certificate.[27] Such notice is to be filed following the completion of certain remaining activities in these receivership

[24] First Report at para 28, Motion Record, Tab 2.
[25] First Report at para 38, Motion Record, Tab 2.
[26] First Report at para 39, Motion Record, Tab 2.
[27] First Report at para 41, Motion Record, Tab 2.

proceedings including, among other things, (i) completing the Sale Transaction, (ii) effecting the bankruptcy of the Debtors, and (iii) the distribution of the proceeds of the Sale Transaction to FCC (collectively, the "**Remaining Activities**").[28]

33. The draft Ancillary Relief and Discharge Order also provides that the Receiver shall not be liable for any act or omission on its part, or any reliance thereon, including without limitation, any act or omission pertaining to the discharge of its duties in the receivership proceedings, and releases the Receiver and its legal counsel from potential future claims in connection with their performance of duties.

## PART III: STATEMENT OF ISSUES, LAW & AUTHORITIES

34. There are two issues to be addressed in this motion:

(a) Should this Court grant the Approval and Vesting Order?

(b) Should this Court grant the Ancillary Relief and Distribution Order?

### A. The Approval and Vesting Order

*The Sale Transaction Should be Approved*

35. Section 100 of the CJA, as amended, authorizes this Court to grant an order vesting "in any person an interest in real or personal property that the Court has

[28] First Report at para 41, Motion Record, Tab 2.

authority to order be conveyed".[29] Similarly, section 243(1) of the BIA vests this Court with the jurisdiction to "grant a vesting order vesting property in a purchaser".[30]

36. The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* ("***Soundair***"):

(a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which the party obtained offers; and

(d) whether the working out of the process was unfair.[31]

37. The Sale Transaction satisfies the *Soundair* principles, given that:

(a) the Purchased Assets were subject to a robust marketing process through the SISP;

[29] *Courts of Justice Act*, RSO 1990, c. C.43 s 100; *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009 at para 30 [Elleway].
[30] *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc*, 2019 ONCA 508 at para 87 [Third Eye]; *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 s 243(1) [BIA].
[31] *Royal Bank of Canada v Soundair Corp*, [1991] 46 OAC 321 at para 16 [Soundair]; Elleway at para 31; *Home Trust Co v 2122775 Ontario Inc*, 2014 ONSC 1039 at para 11; *Romspen Investment Corp v 6176666 Canada Ltée*, 2012 ONSC 1727 at para 18 [Romspen].

(b) the Purchaser satisfies the IESO Requirement, which was a requirement for any successful bidder to move forward with a sale transaction;

(c) the Receiver believes that the consideration provided for in the Sale Transaction represents the best recovery in respect of the Purchased Assets in the circumstances; and

(d) FCC, the senior secured creditor whose security is valid and enforceable, and who will suffer a significant shortfall (even if CRA's claim for HST ranks subordinate), is supportive of the Sale Transaction.[32]

*The Court has Jurisdiction to Grant the Approval and Vesting Order*

38. In *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, the Ontario Court of Appeal clarified that a court's jurisdiction under section 243(1) of the BIA to authorize a receiver to "take any other action that the court considers advisable" includes the authority to grant a vesting order vesting property in a purchaser free and clear of encumbrances and extinguishing liabilities.[33]

39. In granting approval and vesting orders, courts have made clear that the recommendation of the Court-appointed receiver in respect of the proposed sale transaction should only be ignored in exceptional circumstances.[34]

[32] First Report at paras 13-17, 20-25, 31.
[33] Third Eye at para 87.
[34] Soundair at para 58; Romspen at para 18.

*The Sealing Language is Necessary*

40. The Receiver respectfully requests that the Court seal information relating to the Purchase Price until the completion of the Sale Transaction.

41. In *Sherman Estate v. Donovan,* the Supreme Court recast the test to be used by a court in considering whether a sealing order should be granted.[35] The party asking a court to exercise its discretion to grant a sealing order must establish that:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[36]

42. Sealing orders relating to transaction economics are regularly granted in receivership and other insolvency proceedings as courts have recognized that the disclosure of highly sensitive commercial information, including purchase prices, can be "harmful to stakeholders by undermining the integrity of the sale process".[37] Courts have also recognized that there is a broader public interest in

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[35] *Sherman Estate v. Donavon*, 2021 SCC 25 at para 38 [Sherman Estate].
[36] Sherman Estate at para 38.
[37] Elleway at para 48. See also: *Ontario Securities Commission v Bridging Finance Inc. et al* (July 17, 2023) Toronto CV-21-00661458-00CL, (ONSC) Approval and Vesting Order at para 7 [Bridging].

maintaining the confidentiality of sensitive commercial information, including key business terms of sale purchase agreements.[38]

43. If the requested Approval and Vesting Order is granted, it is expected that the Sale Transaction will close on or before April 30, 2024. Therefore, as a matter of proportionality, the benefits of sealing the purchase price and thereby preserving the value of the Purchased Assets should closing not occur outweigh the negative effects, and the sealing order should be granted.

## B. The Ancillary Relief and Distribution Order

*The Receiver's Activities Should be Approved*

44. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and SISP Order, and were in each case in the best interests of the Debtors and their stakeholders generally.

*The Fees and Disbursements of the Receiver and its Counsel are Fair and Reasonable*

45. The Receiver is seeking approval of the professional fees incurred as described in the Fee Affidavit of Dan Wootton.[39] Pursuant to paragraph 18 of the Receivership Order, the Receiver and its counsel are entitled to be "paid their

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[38] *U.S. Steel Canada Inc. et al. v The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union et al.*, 2023 ONSC 2579 at para 54 [U.S. Steel]; and *American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al.*, 2023 ONSC 3322 at para 30.

[39] First Report, Appendix H, "Fee Affidavit of Dan Wootton sworn April 9, 2024", Motion Record, Tab 2.

reasonable fees and disbursements, in each case at their standard rates and charges."[40]

46. The standard to be applied is whether the compensation sought is "fair and reasonable", with an emphasis on the value provided and what was accomplished.[41]

47. The Receivership Order provided that the Receiver would retain independent counsel where, in the Receiver's judgment, it determined that it required independent legal counsel.[42] The Receiver retained independent legal counsel solely for the purpose of obtaining an independent legal opinion on the validity and enforceability of FCC's security as against the Property.

48. Given the efforts to streamline fees and the complexity of this insolvency matter, the fees of the Receiver (and the fees of its independent legal counsel) are within an appropriate range for insolvency services of this nature rendered by other firms in the City of Toronto.

*It is Appropriate to Reverse the CRA Priority through a Bankruptcy*

49. The Receiver is seeking authorization to assign any of the Debtors into bankruptcy and for GTL to act as trustee in bankruptcy of the Debtors.

50. The purpose of an assignment into bankruptcy would be to reverse the statutory priority of the $64,000 CRA liability. Courts have recognized that it is not

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[40] Receivership Order dated September 18, 2023 at para 18.
[41] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at paras 44-45.
[42] Receivership Order dated September 18, 2023 at para 3(d).

improper to seek a bankruptcy order for the purpose of reversing a statutory priority.[43]

*The Proposed Distribution is Fair and Reasonable*

51. The Receiver is seeking authorization and direction to make a distribution to FCC, not to exceed the indebtedness owing to FCC. Orders authorizing distributions with a reserve are routinely granted by courts in insolvency proceedings, including receiverships, and the Court's authority to grant such distributions is well established.[44]

52. FCC is the primary senior secured creditor and holds a valid and enforceable security interest against SIF's Property. The Receiver is not aware of any other secured creditors with a prior ranking claim, or creditors generally who might have a claim in priority to FCC aside from CRA's HST claim.[45] FCC will suffer a significant shortfall, even if CRA's claim for HST ranks subordinate.[46] As such, the Receiver respectfully submits that it be granted the authority to distribute the proceeds of the Sale Transaction to FCC up to the total amount of the indebtedness owed to FCC.

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[43] *Ivaco Inc., Re*, 2006 CanLII 34551 (ON CA); *Bank of Nova Scotia v. Huronia Precision Plastics Inc.*, 2009 CanLII 2319 (ON SC) at para 13.
[44] *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ONSC) at paras 8 and 13; *Abitibibowater Inc. (Re)*, 2009 QCCS 6461 at paras 70-75 [Abitibibowater].
[45] First Report at para 28, Motion Record, Tab 2.
[46] First Report at para 31, Motion Record, Tab 2.

*The Receiver Should be Discharged and Released*

53. Pursuant to the draft Ancillary Relief and Discharge Order, GTL will be discharged as the Receiver of the Debtors' Property and released from any and all liability that it has or may have through any reason of, or in any way arising out of, its acts or omissions while acting in its capacity as the Receiver, upon the filing of the Receiver's Certificate.[47]

54. This Court has inherent jurisdiction to discharge a Court-appointed receiver upon the completion of its mandate.[48] When exercising such jurisdiction, this Court has held that a release in favor of the Court-appointed receiver "should issue", provided that there is no evidence of improper conduct or negligence on the part of the receiver.[49]

55. In these circumstances, the Receiver submits that it is appropriate for this Court to exercise its jurisdiction to discharge and release GTL in the manner proposed given that: (i) upon the completion of the Remaining Activities, the Receiver will have no further mandate in these receivership proceedings; (ii) the proposed release is customary and included in the Court's model discharge order; and (iii) approving the Receiver's discharge upon filing of the Receivership Certificate will prevent the need for a subsequent Court attendance, and therefore promotes

[47] First Report at para 41, Motion Record, Tab 2.
[48] BIA, s.183(1). See also *Ed Mirvish Enterprises Ltd v Stinson Hospitality Inc.* (2009), OJ No. 4265 at paras 8-9 [Ed Mirvish]; *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 58 at paras 26-28 [Yukon Zinc]; *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*(February 7, 2024), Toronto CV-22-674810-00CL (Endorsement) (ONSC).
[49] *Pinnacle Capital Resources Ltd v Kraus Inc*, 2012 ONSC 6376 at para 47 [Pinnacle]. See also, Yukon Zinc at paras 26-29.

both fiscal efficiency for the estate as well as the efficient use of the Court's time. The Receiver therefore submits that the Receivership Proceedings should be terminated and the Receiver should be discharged and released following the filing of the Receiver's Certificate with the Court, certifying that it has completed the Remaining Activities.

## PART IV: ORDER REQUESTED

56. The Receiver requests that this Court grant the proposed form of Approval and Vesting Order and Ancillary Relief and Discharge Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10th day of April, 2024.

Heather Fisher

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**SCHEDULE "A"**

**LIST OF AUTHORITIES**

1. *Abitibibowater Inc. (Re)*, 2009 QCCS 6461
2. *American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al.*, 2023 ONSC 3322
3. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
4. *Bank of Nova Scotia v. Huronia Precision Plastics Inc.*, 2009 CanLII 2319 (ON SC)
5. *Ed Mirvish Enterprises Ltd v Stinson Hospitality Inc.* (2009), OJ No. 4265
6. *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009
7. *Home Trust Co v 2122775 Ontario Inc*, 2014 ONSC 1039
8. *Ivaco Inc., Re*, 2006 CanLII 34551 (ON CA)
9. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2024 ONSC 919
10. *Ontario Securities Commission v Bridging Finance Inc. et al*, 2023 ONSC 4203
11. *Pinnacle Capital Resources Ltd v Kraus Inc*, 2012 ONSC 6376
12. *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772
13. *Romspen Investment Corp v 6176666 Canada Ltée*, 2012 ONSC 1727
14. *Royal Bank of Canada v Soundair Corp*, [1991] 46 OAC 321
15. *Sherman Estate v. Donavon*, 2021 SCC 25
16. *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc*, 2019 ONCA 508
17. *U.S. Steel Canada Inc. et al. v The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union et al.*, 2023 ONSC 2579
18. *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 58

## SCHEDULE "B"

## TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

**Section 183**

**Courts vested with jurisdiction**

(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

**Section 243**

**Court may appoint receiver**

(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.

**Restriction on appointment of receiver**

(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.

**Definition of receiver**

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — 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 — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of receiver — subsection 248(2)**
(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**
(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**
(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**
(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the 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.

**Meaning of disbursements**
(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

**Section 100**

**Vesting Orders**
A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

FARM CREDIT CANADA
Applicant

-and-

SIF AMBER (3.5) PROJECTS LP et al.
Respondents

Court File No. CV-23-00001092-0000

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
LONDON

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