Court File No. CV-25-00752340-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

DEUTSCHE BANK TRUST COMPANY AMERICAS, DEUTSCHE BANK AG, CANADA BRANCH, and THE BANK OF NOVA SCOTIA

Applicants

- and -

GSC SOLAR FUND I LP, GSC SOLAR FUND I GP INC., GSC SOLAR FUND II LP, GSC SOLAR FUND II GP INC., GSC SOLAR LEASING LP, GSC SOLAR LEASING GP INC., GSC SOLAR LEASING II LP and GSC SOLAR LEASING II GP INC.

Respondents

IN THE MATTER OF AN 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 *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE RECEIVER
Approval and Vesting Order & Approval and Reverse Vesting Order
Returnable August 18, 2026

August 13, 2026

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PART I – INTRODUCTION

1. On September 23, 2025, upon application by Deutsche Bank Trust Company Americas (the "**Agent**"), and Deutsche Bank AG, Canada Branch and The Bank of Nova Scotia (together, the "**Lenders**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an Order (Appointing Receiver) (as amended on October 14, 2025, the "**Original Receivership Order**") appointing Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the "**Receiver**") of: (a) all of the assets, undertakings and properties of the Original Debtors;[1] and (b) the Residential Redirected Account (as defined in the Original Receivership Order).[2]

2. The Original Debtors and the Non-Debtor Obligors (collectively, the "**Grasshopper Entities**") directly or indirectly own and operate solar generation projects across Ontario in two distinct portfolios: (a) a commercial and industrial portfolio consisting of approximately 132 solar projects (the "**C&I Portfolio**"); and (b) a residential portfolio consisting of approximately 3,200 solar projects (the "**Residential Portfolio**").[3]

3. On February 27, 2026, the Court granted a sale process approval order (the "**Sale Process Approval Order**"), which, among other things, authorized the Receiver and Scotia Capital Inc., in its capacity as sale advisor (the "**Sale Advisor**"), to conduct a sale process (the "**Sale Process**") to solicit interest in and consummate one or more sale, investment, recapitalization, refinancing,

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[1] The "**Original Debtors**" are the following eight entities: GSC Solar Fund I LP, GSC Solar Fund II LP, GSC Solar Fund I GP Inc., GSC Solar Fund II GP Inc., GSC Solar Leasing LP, GSC Solar Leasing II LP, GSC Solar Leasing GP Inc. and GSC Solar Leasing II GP Inc.

[2] Capitalized terms used and not otherwise defined herein have the meanings given to them in the Second Report of the Receiver dated July 30, 2026 (the "**Second Report**").

[3] Second Report at para. 1.2 [E694].

restructuring or other transactions in respect of the Grasshopper Entities and their business and property (the "**Grasshopper Business and Property**").

4. The Sale Process achieved a broad and comprehensive canvass of the market, with the Sale Advisor contacting 224 potential bidders in respect of the opportunity and 58 parties executing NDAs and conducting diligence. Bids were solicited and assessed over two phases in accordance with the Sale Process Approval Order. At the conclusion of the Sale Process, the Receiver, in consultation with the Sale Advisor and with the consent of the Lenders, designated the bid submitted by buyer entities affiliated with the Skyline Group of Companies ("**Skyline**") as the Successful Bid in the Sale Process. Skyline is a sophisticated and well-capitalized company with significant experience owning and operating solar assets in Ontario.

5. The Receiver and Skyline (through its buyer entities) have entered into separate but cross-conditional transaction agreements for the acquisition of both the C&I Portfolio and the Residential Portfolio: (a) an Asset Purchase Agreement dated July 24, 2026 between the Receiver and St. Regis Solar Power Corporation (the "**C&I Buyer**") in respect of the C&I Portfolio (the "**C&I APA**"); and (b) an Equity Purchase Agreement dated July 24, 2026 between the Receiver and Skyline Clean Energy Limited Partnership, by its general partner, Skyline Clean Energy GP Inc. (the "**Residential Buyer**"), in respect of the Residential Portfolio (the "**Residential EPA**").

6. The Receiver brings this motion seeking two orders: (a) an Approval and Vesting Order (the "**C&I AVO**"), approving the asset sale transaction contemplated by the C&I APA (the "**C&I Transaction**") and granting related relief; and (b) an Approval and Reverse Vesting Order (the "**Residential RVO**"), approving the equity sale transaction contemplated by the Residential EPA (the "**Residential Transaction**") and granting related relief.

7. The C&I Transaction and the Residential Transaction (collectively, the "**Transactions**") will, if implemented, achieve a going concern outcome through the acquisition of all or substantially all of the Grasshopper Business and Property. Completion of the Transactions will preserve the key contractual arrangements associated with the operation of the Grasshopper Entities' solar projects, consisting of the "Feed-in-Tariff" (known as "**FIT**") and "microFIT" contracts with Ontario's Independent Electricity System Operator ("**IESO**"), connection agreements with local distribution companies ("**LDCs**"), and real property leases with landlords.

8. The Lenders support approval of the Transactions notwithstanding that the Transactions will not provide sufficient value to repay in full the approximately $160 million of indebtedness owing to the Lenders under the Credit Agreement (the "**Indebtedness**"), which Indebtedness is secured against all or substantially all of the assets and property of the Grasshopper Entities. The Lenders will suffer a significant deficiency on the amounts owing to them and are the only stakeholder with a remaining economic interest in the Grasshopper Entities.

PART II – FACTS

A. Background

9. The Grasshopper Entities are a group of 57 corporations and partnerships comprised of: (a) the eight Original Debtors; and (b) the 49 direct or indirect subsidiaries of the Original Debtors designated as the "**Non-Debtor Obligors**" in the Original Receivership Order.[4]

10. The Residential Portfolio is wholly-owned by the Original Debtors. The C&I Portfolio is owned by the Non-Debtor Obligors. In certain cases, the equity in the Non-Debtor Obligors is

[4] Second Report at paras. 4.2 and 4.8 [E699 and E701]; Original Receivership Order.

wholly owned by Grasshopper Entities. However, 16 of the Non-Debtor Obligors have third-party co-owners (the "**Third-Party Project Co-Owners**") that have majority or minority equity interests in the applicable Non-Debtor Obligor.[5]

11. The Agent has a security interest in all or substantially all of the assets of the Non-Debtor Obligors to secure the payment of the Indebtedness. The Applicants were in a position at the commencement of the Receivership Proceedings to seek the appointment of a receiver in respect of both the Original Debtors *and* the Non-Debtor Obligors. However, the Applicants chose not to include the Non-Debtor Obligors as "Debtors" under the Original Receivership Order to avoid prematurely impacting the operations of the Non-Debtor Obligors and the interests of the Third-Party Project Co-Owners before the outcome of the Sale Process was known.[6] The Original Receivership Order contained a number of protections and authorizations in relation to the Non-Debtor Obligors to preserve their value and normal course operations with minimal disruption.[7]

12. The Court-approved Sale Process authorized the Receiver to market the assets and property of the Grasshopper Entities, including the Non-Debtor Obligors. The Sale Process Approval Order expressly permits a motion to include the Non-Debtor Obligors directly within the scope of the Receivership Proceedings, including in connection with any motion seeking the Court's approval of the successful transaction emanating from the Sale Process.[8]

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[5] Second Report at paras. 4.2 and 4.9 [E699 and E701].

[6] Second Report at para. 4.10 [E701].

[7] See e.g., Original Receivership Order at para. 16.

[8] Sale Process Approval Order at paras. 5 and 9 and Schedule "A".

13. The Applicants have brought a motion, to be heard concurrently with the Receiver's motion for approval of the Transactions, seeking an Amended and Restated Receivership Order that appoints the Receiver as the receiver and manager of the Non-Debtor Obligors. Given the Agent's security interest in the Non-Debtor Obligors, the results of the Sale Process and the structure of the C&I Transaction (which requires that the assets of the Non-Debtor Obligors be conveyed to the C&I Buyer on a "free and clear basis"), the Receiver believes that the granting of the Amended and Restated Receivership Order is appropriate in the circumstances and necessary to maximize the value of the Grasshopper Business and Property.[9]

B. The Sale Process

14. Following the issuance of the Sale Process Approval Order on February 27, 2026, the Sale Advisor distributed a public marketing brochure and a form of non-disclosure agreement ("**NDA**") to 224 potential bidders. A total of 58 parties executed an NDA and were provided access to an electronic data room developed for the Sale Process. In total, 21 LOIs were received in Phase 1 of the Sale Process, 16 of which were Qualified LOIs and five of which were non-compliant LOIs.[10]

15. Following review of the LOIs, the Receiver, in consultation with the Sale Advisor and the Lenders, invited six Qualified Bidders to advance to Phase 2 of the Sale Process. During Phase 2, Qualified Bidders had the opportunity to review extensive materials provided in the Phase 2 data room, conduct supervised site visits of solar projects, and receive responses to their questions and requests for additional information.[11]

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[9] Second Report at para. 6.13 [E709].

[10] Second Report at paras. 7.5(i), 7.5 (ii), and 7.5(iv) [E712].

[11] Second Report at paras. 7.5(v) and 7.6 [E712 and E713].

16. Ultimately, two parties submitted Final Bids prior to the Phase 2 Bid Deadline. The Receiver, in consultation with the Sale Advisor, assessed the Final Bids in accordance with the Sale Process and provided the Qualified Bidders with an opportunity to clarify and improve their bids. After such discussions, and with the consent of the Lenders, the Receiver selected the Qualified Bid submitted by Skyline as the Selected Qualified Bid and negotiated and settled the terms of the C&I APA and Residential EPA.[12]

C. The Transactions

17. The Receiver is seeking approval of both the C&I Transaction and the Residential Transaction. The Transactions are cross-conditional on each other and are required to close concurrently. The Transactions collectively provide for the acquisition of substantially all of the business and assets of the Grasshopper Entities. If implemented, the Transactions will result in the continued operation of both the C&I Portfolio and Residential Portfolio by an experienced operator of solar projects, preserve existing project agreements with key stakeholders, and ensure that the Grasshopper Entities' solar projects continue to provide clean solar energy into Ontario's grid.[13]

(i) The C&I Transaction[14]

18. The purchased assets under the C&I Transaction include, among other things: (a) the Purchased Equipment; (b) the Sellers' interests in the Property Leases, Connection Agreements and FIT Contracts in respect of each of the Purchased Projects (the "**Project Agreements**"); (c) the

[12] Second Report at paras. 7.6(vi) and 7.8 [E713 and 714].

[13] Second Report at paras. 7.10 and 7.11 [E716].

[14] Capitalized terms used in this section and not otherwise defined have the meanings given to them in the C&I APA.

interests of the Sellers or the Receiver, as applicable, in the Additional Contracts; and (d) certain related prepaid expenses, records, authorizations and other assets.[15]

19. Certain of the Project Agreements require counterparty consent to any assignment of the interest of the applicable Grasshopper Entity (the "**Consent Required Contracts**"). The Receiver has identified 24 Property Leases and all Connection Agreements as Consent Required Contracts. Following service of the Receiver's Motion Record, the Receiver sent letters to each of the counterparties to the Consent Required Contracts (by email on July 30 and mail on July 31) requesting their consent to the assignment of the applicable Consent Required Contract to the C&I Buyer and notifying them that, if a Counterparty Consent is not received, the Receiver intends to seek an assignment of the Consent Required Contract pursuant to the proposed C&I AVO.[16]

20. The FIT Contracts are assignable with the consent of the IESO. The IESO has indicated that it will provide its consent to the assignment of the FIT Contracts to the C&I Buyer, subject to the C&I Buyer entering into binding assignment documentation with the IESO and complying with the terms of the FIT Contracts.[17]

21. Under the C&I APA, the C&I Buyer is responsible for implementing required arrangements in respect of FIT Contracts that are designated as "Participation Projects", including by partnering with one or more Third-Party Project Co-Owners or implementing one or more replacement or alternative qualifying participation arrangements. The implementation of any particular participation structure is not a condition to closing of the C&I Transaction. If a Third-

[15] Second Report at para. 8.1 (Purchased Assets) [E717].

[16] Second Report at paras. 8.10 and 8.11 [E723].

[17] Second Report at para. 8.9 [E722].

Party Project Co-Owner reaches consensual arrangements with the C&I Buyer with respect to go-forward participation in certain solar projects, the C&I Buyer will assume the rights and obligations under the applicable agreements with the Third-Party Project Co-Owner (including as they may be amended or modified in connection with such consensual arrangements). To the extent that consensual arrangements cannot be reached with a particular Third-Party Project Co-Owner, all debt and equity obligations owing to such Third-Party Project Co-Owner will be treated as Excluded Liabilities under the C&I APA and not assumed by the C&I Buyer.[18]

22. Completion of the C&I Transaction is conditional on the granting of the proposed C&I AVO, the granting of the proposed Amended and Restated Receivership Order, and certain other limited and customary closing conditions.[19]

(ii) The Residential Transaction[20]

23. The proposed Residential Transaction contemplates that the Residential Buyer will acquire: (a) all the Equity Interests of GSC Solar Leasing LP and GSC Solar Leasing II LP (each a "**Residential Entity**" and collectively the "**Residential Entities**"), which are the entities that own and operate the Residential Portfolio; and (b) the Residential Redirected Account.[21]

24. The Residential Transaction is structured as a reverse vesting transaction, whereby: (a) the Residential Buyer will acquire the Purchased Equity Interests, and all other Equity Interests (if any) in the Residential Entities will be cancelled and terminated; (b) each Residential Entity will

[18] Second Report at paras. 8.4 and 8.5 [E720].

[19] Second Report at para. 8.1 (Key Conditions) [E719].

[20] Capitalized terms used in this section and not otherwise defined have the meanings given to them in the Residential EPA.

[21] Second Report at para. 9.1 (Transaction Structure) [E724].

retain its Retained Assets, free and clear of all Claims and Encumbrances except Retained Liabilities and Permitted Encumbrances; and (c) the Excluded Assets and Excluded Liabilities of the Residential Entities will be transferred to and vested in "**ResidualCo**", being: (i) in respect of GSC Solar Leasing LP, GSC Solar Leasing GP Inc.; and (ii) in respect of GSC Solar Leasing II LP, GSC Solar Leasing II GP Inc.[22]

PART III– ISSUES, LAW & ANALYSIS

25. This Factum addresses the following issues:

(a) whether the Transactions should be approved;

(b) whether the reverse vesting structure for the Residential Portfolio is appropriate;

(c) whether the Grasshopper Entities' interests in the Assigned Contracts should be assigned to the C&I Buyer pursuant to the proposed C&I AVO;

(d) whether it is appropriate to order that the Residential Entities shall have all right, title and interest in and to the Mailboxes;

(e) whether it is appropriate to grant releases in favour of the Receiver and its representatives, contractors and advisors in relation to the Sale Process and the Transactions; and

(f) whether sealing the Confidential Appendices is appropriate.

[22] Second Report at para. 9.1 (Transaction Structure) [E724].

A. The Transactions Should be Approved

26. The principles for the Court to consider on a sale approval motion in a receivership are set out in the Ontario Court of Appeal decision in *Royal Bank v. Soundair Corp.*: (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 any unfairness in the working out of the process.[23] The Court should place particular weight on the Court-appointed officer's business judgment and recommendation with respect to a proposed transaction.[24] The Receiver submits that the Transactions satisfy the *Soundair* principles for the reasons that follow.

27. ***The Receiver made a sufficient effort to obtain the best price.*** The proposed Transactions are the result of a broad, comprehensive and Court-approved Sale Process. The Grasshopper Business and Property was extensively marketed by the Sale Advisor, who has deep expertise in renewable asset transactions. The marketing process generated substantial interest: 224 prospective purchasers were contacted, 58 parties executed an NDA and were granted access to the virtual data room, the Receiver received 21 LOIs in connection with Phase 1 of the Sale Process, and two parties delivered Final Bids prior to the Phase 2 Bid Deadline. The Receiver is of the view that the Transactions maximize the value of the Grasshopper Entities relative to any other available alternative and that further time and expense marketing the Grasshopper Business and Property would not result in superior transaction(s) being identified.[25]

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[23] (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para. 16.

[24] *Re Eddie Bauer of Canada* (2009), 57 CBR (5th) 241 (Ont. S.C.J. [Commercial List]) at para. 22; *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), 12 C.B.R. (4th) 87 (Ont. S.C.J. [Commercial List]) at paras. 3 and 7.

[25] Second Report at paras. 7.5, 7.6, 10.1(i) and 10.1(ii) [E712, E713 and E737].

28. ***The interests of all stakeholders were considered.*** The Receiver considered the interests of all stakeholders as it worked to achieve the best available outcome in the circumstances. In particular: (a) the Lenders, as the fulcrum creditor with the only remaining economic interest in the Grasshopper Entities, were regularly consulted throughout the Sale Process, and the Lenders support approval of the Transactions notwithstanding that they will suffer a significant deficiency on the Indebtedness owing to them; (b) the C&I Buyer will assume the Project Agreements, and the Residential Entities will retain the Residential Leases, in each case without modification, to ensure continuity for the key contractual counterparties to the solar projects; and (c) the proposed C&I Transaction provides fair treatment for the Third-Party Project Co-Owners in light of their legal priorities. The Third-Party Project Co-Owners are equity holders in certain Grasshopper Entities. Each Third-Party Project Co-Owner has granted the Agent a security interest in the equity interests in the applicable Grasshopper Entity held by such Third-Party Project Co-Owner and subordinated its entitlements to the payment in full of the Indebtedness. While the go-forward participation of the Third-Party Project Co-Owners in the C&I Portfolio solar projects will be a matter for commercial discussions between Skyline and the Third-Party Project Co-Owners, the results of the Sale Process (including the significant deficiency the Lenders will suffer in respect of the Indebtedness) do not support a recovery for Third-Party Project Co-Owners in respect of their subordinate debt and equity holdings.[26] There is no other viable transaction alternative that provides a better outcome for Third-Party Project Co-Owners.

29. ***The Sale Process was efficacious and fair.*** The Sale Process was commercially reasonable and conducted by the Receiver and Sale Advisor in accordance with the terms of the Court-

[26] Second Report at paras. 8.5, 10.1 (iii), 10.1(v), 10.1(vi) and 10.1(vii) [E720, E738 and E739].

approved Sale Process. All potential purchasers were treated fairly and equally: each party that executed an NDA was granted access to the data room and provided with an opportunity to submit an LOI. The Receiver, in consultation with the Sale Advisor and Lenders, selected six bidders to advance to Phase 2 of the Sale Process, each of whom was afforded the opportunity to conduct further diligence and site visits and submit a Final Bid. The resulting proposed Transactions represent the highest and best executable transaction identified through this broad Sale Process.[27]

B. The Reverse Vesting Structure of the Residential Transaction is Necessary and Appropriate

30. This Court has the jurisdiction to authorize a reverse vesting transaction pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and has exercised its jurisdiction to approve reverse vesting orders in receivership proceedings in appropriate circumstances.[28]

31. In the *Harte Gold* CCAA proceedings, this Court held that the following factors should be considered when determining whether a reverse vesting transaction is appropriate: (a) why is the reverse vesting order necessary in this case; (b) does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative; (c) is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative; and (d) does the consideration being paid for the debtor's business reflect the importance and value of the assets being preserved under the reverse vesting structure.[29]

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[27] Second Report at paras. 7.5(ii), 7.5(v), 10.1(i) and 10.1(viii) [E712, E737 and E739].

[28] BIA, s. 243. See e.g., *Nuance Pharma Ltd. v. Antibe Therapetics Inc.*, 2025 ONSC 706 at para. 10 [*Nuance Pharma*]; *Marshallzehr Group Inc. v 2301402 Ontario Limited and Jake's House Community Residences* (20 February 2026) Toronto, Ont Sup Ct J [Commercial List] CV-25-00753367-00CL (Approval and Reverse Vesting Order) [*Jake's House RVO*]; *BDC Capital Inc. v Magnum Worldwide Holdings Inc.* (09 January 2026) Toronto, Ont Sup Ct J [Commercial List] CV-25-00753367-00CL (Approval and Reverse Vesting Order).

[29] *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para. 38 [*Harte Gold*].

32. A reverse vesting structure does not need to be "necessary" in the absolute sense under the *Harte Gold* criteria. The Receiver does not need to demonstrate that transferring valuable assets through an asset sale would be impossible; rather, the reverse vesting structure must result in a "net benefit to the estate".[30] Accordingly, Canadian courts have granted reverse vesting orders where the structure maximizes stakeholder benefit, including in situations where the delay, costs, uncertainty and risk associated with transferring valuable assets through an asset sale would impair a purchaser's ability to operate the business following closing, or would otherwise affect the purchaser's willingness to complete the transaction or pay the purchase price.[31]

33. The Residential Transaction satisfies the *Harte Gold* criteria and is necessary and appropriate for the reasons set forth in Section 9.19 of the Second Report, including for the reasons that follow.[32]

34. ***The Residential RVO is necessary.*** The Residential Portfolio is comprised of approximately 3,200 individual solar projects. Revenues from the operation of the Residential Portfolio are received in 226 separate Residential Bank Accounts. The arrangements for receiving and collecting payments have developed in an ad hoc manner over time, are project-specific and are complex to administer. The need to preserve the Residential Bank Accounts and the associated payment arrangements is a key factor necessitating a reverse vesting structure. Without a reverse vesting structure, the Residential Buyer would need to establish new bank accounts and modify payment arrangements with approximately 3,200 separate Residential Landlords in a highly

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[30] *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 1722 at para. 33 [*Haro-Thurlow*].

[31] See e.g., *Harte Gold* at para. 71; *Nuance Pharma* at para. 13; *Haro-Thurlow* at para. 33.

[32] Second Report at para. 9.19 [E733].

compressed timeframe. Given that the Residential Landlords – not the Residential Entities – are the counterparties to the microFIT contracts and connection agreements that generate solar project revenue, redirecting payments to the Residential Buyer's own bank accounts would require updates to payment arrangements on a project-by-project basis, including requiring applicable Residential Landlords to direct the applicable LDC to update banking and payment arrangements on file. The Receiver's experience has been that a sizable portion of Residential Landlords do not respond or take action in a timely manner. Accordingly, the Receiver expects that any process to transition payment arrangements (which would be required under an asset sale structure) would be extremely complex, time-consuming, and difficult – if not impossible – to achieve in a commercially reasonable timeframe. Any such transition process would lead to reduced collections and revenue leakage that would reduce the go-forward value of the Residential Portfolio and likely reduce the purchase price payable under an alternative structure. The reverse vesting structure is the only commercially reasonable method to implement the Residential Transaction.[33]

35. ***There is no more favourable economic alternative.*** The Residential Transaction represents the best and only viable means available to the Receiver to implement a going concern acquisition of the Residential Portfolio. The Residential Portfolio was marketed through the Sale Process, which permitted bidders to submit proposals reflecting their desired transaction structure, including the purchase of assets. No Final Bids were received indicating a desire to complete an acquisition of the Residential Portfolio through an asset sale transaction. If the Residential Transaction cannot be completed through a reverse vesting structure, the alternative outcomes would be: (a) attempting to negotiate an asset sale transaction for the Residential Portfolio, which

[33] Second Report at paras. 9.4 to 9.8 and 9.19(i) to 9.19(iv) [E727 – E729 and E733 – E734].

– based on the known complexities outlined above – would either not be available or would be expected to result in a lower purchase price; or (b) pursuing a full orderly wind-down of the Residential Portfolio, which the Receiver expects would not realize comparable value for stakeholders and would not preserve the continuity of the microFIT revenue arrangements and Residential Leases. Accordingly, completion of the Residential Transaction through the reverse vesting structure represents the best economic result possible in the circumstances.[34]

36. ***No stakeholder is worse off under the Residential RVO.*** No stakeholder is worse off under the Residential RVO than under any other viable alternative. Given that the Lenders will suffer a significant deficiency on the Indebtedness owing to them, subordinate creditors have no reasonable prospect of recovery regardless of the transaction structure.[35] Canadian courts have affirmed that a reverse vesting structure cannot make parties worse off when they would receive nothing in the alternative.[36] Other than the Lenders, the primary stakeholders of the Residential Portfolio are the Residential Landlords (*i.e.,* individual homeowners with solar panels on their properties). The Residential Leases provide that the applicable Residential Entity can assign and transfer all or any part of its interest under the Residential Lease, or undergo a change of control, without the consent of or notice to the Residential Landlord. Accordingly, the Receiver is not pursuing a reverse vesting structure to circumvent any rights that Residential Landlords would have in the context of an asset sale. To the contrary, the reverse vesting structure is beneficial to Residential Landlords as it will: (a) result in the continuation of their Residential Leases and related arrangements,

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[34] Second Report at paras. 9.19(vi) and 9.19(vii) [E735 and E736].

[35] Second Report at para. 6.11 [E709].

[36] *Arrangement relatif à Blackrock Metals Inc.,* 2022 QCCS 2828 at para. 120*; Invico Diversified Income Limited Partnership v NewGrange Energy Inc*, 2024 ABKB 214 at para. 27;

unamended; (b) provide for the payment of any Cure Costs owing under their Residential Leases; (c) avoid the need for Residential Landlords to undertake administrative steps (including with the applicable LDC) to facilitate an assignment of the Residential Leases; and (d) result in the Residential Entities being owned and managed by a sophisticated, well-capitalized operator with significant experience in the solar industry.[37]

37. ***The consideration reflects the value of the reverse vesting structure.*** The Residential Buyer conducted substantial due diligence during the Sale Process, and its Final Bid reflected the results of that diligence (including both in value and its desire to complete the Residential Transaction through a reverse vesting structure). As noted above, a traditional asset sale would require the transition of contractual and payment arrangements for approximately 3,200 separate solar projects, which would result in delay, operational risk and revenue leakage that would diminish the overall purchase price of the Residential Portfolio. By addressing these concerns, the reverse vesting structure facilitates the completion of a transaction that maximizes the value of the Residential Portfolio. There is no other implementable transaction in respect of the Residential Portfolio, in any form, that provides greater consideration.[38]

38. The proposed Residential RVO sought by the Receiver is consistent with the terms of reverse vesting orders commonly approved by this Court, including the transfer and vesting of the Excluded Assets and Excluded Liabilities in ResidualCo, and the cancellation and termination of all Equity Interests in the Residential Entities other than the Purchased Equity Interests.[39] This

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[37] Second Report at para. 9.19(viii) [E736].

[38] Second Report at paras. 9.8 and 9.19(ix) [E729 and E737].

[39] See e.g., *Nuance Pharma Ltd. v. Antibe Therapetics Inc.* (29 January 2025) Toronto, Ont Sup Ct J [Commercial List] CV-24-00719237-00CL (Approval and Reverse Vesting Order) [*Nuance Pharma RVO*]; *Jake's House RVO*.

Court has the authority to grant such relief pursuant to subsection 243(1) of the BIA, section 100 of the *Courts of Justice Act* (the "**CJA**"), and its broad inherent jurisdiction in insolvency proceedings codified under section 183 of the BIA.[40] This Court has previously exercised its authority in receivership proceedings to cancel equity interests of target entities to enable the buyer to become the sole shareholder on completion of the transaction,[41] and has noted that such relief is appropriate to provide certainty to the buyer where, as here, there is a deficient state of records.[42]

C. The Relief with Respect to the Mailboxes is Appropriate

39. The proposed Residential RVO orders that the Residential Entities shall have all right, title and interest in and to the mailboxes at 6045 Creditview Road, Unit 392 and 5935 Airport Road, Suite 210, Mississauga, Ontario (each, a "**Mailbox**" and collectively, the "**Mailboxes**"), and the provider of each Mailbox is authorized to update the applicable Mailbox Account Agreement to reflect the Residential Entities as the account holder.[43]

40. The Mailboxes were established in the name of the Former Service Provider at a time when the Former Service Provider was the service provider for the Residential Portfolio under the MSAs. Notwithstanding that the Mailboxes are in the name of the Former Service Provider, the predominant purpose of the Mailboxes is to receive cheques and revenue statements relating to the Residential Portfolio. Revenues from approximately 1,500 solar projects are received by cheque. Approximately 4,500-5,000 pieces of mail are received each month in the Mailboxes.

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[40] BIA, s. 183(1) and 243(1); CJA, s. 100.

[41] See e.g., *Nuance Pharma RVO* at para. 6(d); *Jake's House RVO* at para. 6(f).

[42] See e.g., *In the Matter of a Plan of Compromise or Arrangement of Validus Power Corporation, and Others* (04 January 2024) Toronto, Ont Sup Ct J [Commercial List] CV-23-00705215-00CL (Endorsement of Justice Osborne) at para. 59. Second Report at para. 6.5 [E707].

[43] See proposed Residential RVO at para. 10 [E1178].

Approximately 99% of this mail relates to the Residential Portfolio; approximately 1% of the total mail received is addressed to the Former Service Provider.[44]

41. It is essential that the Residential Entities have continued and uninterrupted access to the Mailboxes in order to receive and collect revenues of the Residential Portfolio. For this reason, the MSAs with the Former Service Provider provide that, on termination of the MSAs, the Residential Entities shall have the right to assume and become liable for any contracts entered into by the Former Service Provider in connection with managing the Residential Portfolio.

42. Subsection 243(1) of the BIA empowers a court to appoint a receiver and to authorize the receiver to "take any action that the court considers advisable".[45] The Supreme Court of Canada has held that the "very expansive wording" of paragraph 243(1)(c) of the BIA confers upon judges "the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise" in a court-ordered receivership.[46] This broad jurisdiction permits the Court "to do not only what 'justice dictates' but also what 'practicality demands'."[47]

43. The Receiver submits that it is appropriate for the proposed Residential RVO to order that the Residential Entities have all right, title and interest in and to the Mailboxes. The requested relief: (a) reflects the practical reality, in which almost all of the mail received at the Mailboxes relates to the operation of the Residential Portfolio; (b) is consistent with the terms of the MSAs, which permit the Residential Entities to assume contracts relating to the Residential Portfolio and

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[44] Second Report at paras. 9.10 and 9.11 [E730].

[45] BIA s. 243(1).

[46] *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 [*Peace River*] at para. 148.

[47] *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.,* 2019 ONCA 508 at para. 57 [*Dianor Resources*]; *Peace River* at para. 148.

require the Former Service Provider to take commercially reasonable efforts to cooperate with that transition; and (c) is necessary to ensure that the Residential Entities have continued access to the Mailboxes in order to collect the cheques that are delivered to the Mailboxes on a monthly basis and which constitute a material portion of the revenue of the Residential Portfolio. Counsel to the Former Service Provider was served with the Receiver's Motion Record on July 30, 2026.[48]

44. The proposed Residential RVO provides appropriate protections for the Former Service Provider in connection with the Mailboxes, including that: (a) the Residential Entities shall be responsible for the payment and performance of all obligations in respect of the Mailbox Account Agreements; and (b) if any mail is received at a Mailbox that does not reasonably appear to relate to the Residential Entities or appears to relate to the Former Service Provider or its affiliates, representatives of the Residential Entities shall make arrangements with representatives of the Former Service Provider for the handover of such mail.[49]

D. Assignment of the Assigned Contracts pursuant to the C&I AVO is Appropriate

45. Completion of the C&I Transaction is conditional on, with respect to each Project Agreement that is a Consent Required Contract, the Receiver having obtained the requisite Counterparty Consent or an Order of this Court assigning the Consent Required Contract.[50]

46. Following service of the Receiver's Motion Record, on July 30 and 31, 2026, the Receiver sent letters to the counterparties to the 24 Property Leases and 132 Connection Agreements which

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[48] Lawyer's Certificate of Service dated July 30, 2026.

[49] See proposed Residential RVO at paras. 10 and 11 [E1178].

[50] Pursuant to Section 6.2(d) of the C&I APA, the closing condition is satisfied if, in aggregate, the Project Agreements that are Consent Required Contracts for which a Counterparty Consent or Assignment Order is not obtained do not collectively exceed the Project Agreements Threshold.

the Receiver identified as Consent Required Contracts. The Receiver will file a supplementary report prior to the return date of the motion to update the Court on the Counterparty Consents received. To the extent that Counterparty Consents are received prior to the return date of the Receiver's motion, the Receiver will remove the associated contracts from the list of Assigned Contracts set forth on Schedule "D" to the proposed C&I AVO. The Receiver will seek, pursuant to the proposed C&I AVO, the Court-ordered assignment of all Assigned Contracts (being the Consent Required Contracts for which a Counterparty Consent has not been received at the time of the Court hearing for approval of the C&I Transaction).

47. In *Urbancorp*, Chief Justice Morawetz confirmed that, while the BIA is silent with respect to whether a receiver can seek an order assigning a debtor contract, "if both a trustee and a monitor may apply for such an order, the only purposive interpretation which harmonizes the Canadian insolvency regimes and prevents the loss of value from the estate of the debtor is the application of section 84.1 of the BIA to receivers".[51]

48. Chief Justice Morawetz concluded that paragraph 243(1)(c) of the BIA, which provides that a court may appoint a receiver to take any other action that the court considers advisable, in conjunction with section 100 of the CJA, is broad enough to form the basis for the Court to make an assignment order in a receivership proceeding.[52]

49. The criteria referenced in subsection 84.1(4) of the BIA and section 11.3 of the CCAA inform the test for an assignment by a receiver. The Court must consider: (a) whether the person

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[51] *Urbancorp Cumberland 1 GP Inc. (Re),* 2020 ONSC 7920 at para. 23 [*Urbancorp*].

[52] *Urbancorp* at paras. 30-31.

to whom the rights and obligations are to be assigned would be able to perform the obligations; and (b) whether it would be appropriate to assign the rights and obligations to that person.[53]

50. ***The C&I Buyer will be able to perform the obligations under the Assigned Contracts.*** Skyline is an established owner and operator of renewable energy projects. Throughout the Sale Process, Skyline has demonstrated: (a) its ability to fund the Transactions; (b) its experience owning and operating solar assets in Ontario; (c) its familiarity with the FIT and microFIT regimes and dealings with IESO and LDCs; (d) the availability of legal, financial and operational resources; and (e) the industry expertise and operational capabilities necessary to continue the ownership and operation of the Purchased Projects on a go-forward basis. Skyline is a suitable party to assume the obligations of the Assigned Contracts and the Receiver does not believe that any party will suffer material prejudice as a result of the proposed assignments.[54]

51. ***It is appropriate to assign the rights and obligations of the Assigned Contracts to the C&I Buyer.*** The Assigned Contracts are an integral and valuable component to the C&I Transaction. The C&I Buyer must acquire the Grasshopper Entities' interests in the Property Leases and Connection Agreements in order to operate the applicable solar projects. Accordingly, assignment of the Assigned Contracts that are Project Agreements is a closing condition of the C&I Transaction (subject to the Project Agreements Threshold). Assignment of the Assigned Contracts to the C&I Buyer will facilitate the completion of the C&I Transaction and maximize the value of the C&I Portfolio. The counterparties to the Assigned Contracts are treated fairly and equitably under the assignment. All parties to the Assigned Contracts were provided notice of the

[53] *Urbancorp* at para. 35; BIA, s. 84.1; CCAA, s. 11.3.

[54] Second Report at para. 10.1(vi) [E738].

proposed assignment. There is no prejudice to the counterparties – the Assigned Contracts will be assigned in their current form, unamended. The C&I Buyer is simply stepping into the shoes of the Grasshopper Entities on identical terms. The counterparties to the Assigned Contracts will benefit from the assignment, as the insolvent Grasshopper Entity will be replaced as tenant by the C&I Buyer, who has the financial and operational resources necessary to manage and operate the applicable solar projects. While the Receiver does not believe that any Cure Costs are owing in respect of the Assigned Contracts, the proposed C&I AVO provides that the C&I Buyer shall pay any Cure Costs owing thereunder within 10 Business Days of closing of the C&I Transaction.[55]

E. The Releases of the Released Parties are Appropriate

52. The proposed C&I AVO and Residential RVO each contain releases (the "**Releases**") in favour of the Receiver and its partners, employees, representatives, contractors (including Spark, FAAN and the Sale Advisor) and legal counsel and other advisors (collectively, the "**Released Parties**") with respect to: (a) in the case of the proposed C&I AVO, the conduct and implementation of the Sale Process and the terms, development, negotiation and implementation of the C&I APA and the C&I Transaction; and (b) in the case of the proposed Residential RVO, the conduct and implementation of the Sale Process and the terms, development, negotiation and implementation of the Residential EPA and the Residential Transaction.[56]

53. This Court has frequently exercised its jurisdiction, in the context of approving transactions, to grant releases to receivers and other court officers relating to such transactions and

[55] Second Report at paras. 8.1 (Key Conditions), 8.10, 8.11 and 10.1(vi) [E723 and E738].

[56] See proposed C&I AVO at para. 16 [E1074] and proposed Residential RVO at para. 27 [E1183].

related matters.[57] Where such releases have included third parties other than court officers, courts have applied the factors set out in *Lydian International*.[58]

54. The proposed Releases are rationally connected to the approval of the Transactions, are limited in scope, and are appropriate in the circumstances. The proposed Releases are intended to provide certainty and finality for the Released Parties, to prevent any collateral attack on the Sale Process or the Transactions, and to ensure that estate resources are not expended in relation to any Released Claims. As described in the Second Report, all of the Released Parties have provided significant and material contributions in the Sale Process and the development and implementation of the Transactions. The Released Parties are limited to the Receiver and its representatives, contractors and advisors. The scope of the Releases is limited narrowly to the conduct of the Sale Process and the terms, development, negotiation and implementation of the Transactions. The proposed Releases do not release any claim with respect to any act or omission of a Released Party that is unrelated to the Sale Process or the Transactions or is finally determined by a court of competent jurisdiction to have constituted actual fraud or wilful misconduct.[59] The Receiver is not aware of any opposition to the proposed Releases.

F. Sealing the Confidential Appendices is Appropriate

55. The proposed C&I AVO provides that: (a) Confidential Appendix "A" to the Second Report, containing the Bid Summary, be sealed until further Order of the Court; and

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[57] See e.g., *Nuance Pharma* at paras. 1(a)(iv) and 16; *The Cannabist Company Holdings Inc.; The Cannabist Company Holdings (Canada) Inc. v. East West Bank* (15 April 2026) Toronto, Ont Sup Ct J [Commercial List] CL-26-00000122-0000 (Endorsement of Justice J. Dietrich) at paras. 25-27; *Harte Gold* at paras. 78-80.

[58] *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54.

[59] Second Report at paras. 11.6 and 11.7 [E741].

(b) Confidential Appendices "B" and "C", containing unredacted copies of the C&I APA and the Residential EPA, respectively, be sealed until closing of the Transactions.

56. This Court has discretion pursuant to section 137(2) of the CJA to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.[60] In *Sherman Estate*, the Supreme Court of Canada set out the three prerequisites that must be established to obtain a sealing order: (a) court openness poses a serious risk to an important public interest; (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.[61]

57. The Bid Summary contains confidential information regarding the bids submitted in the Sale Process, including the terms of those bids (which were submitted on a confidential and non-binding basis) and the bidders who submitted them. The unredacted C&I APA and Residential EPA contain confidential information with respect to the Transactions, including the quantum of the purchase price and deposit under each Transaction. If the Transactions do not close, public disclosure of the foregoing would harm the integrity of, and the Receiver's efforts to maximize value in, a subsequent marketing process for the Grasshopper Business and Property. The proposed sealing will facilitate the objective of maximizing value by ensuring that commercially sensitive information is maintained as confidential until further Court Order (in the case of the Bid Summary) or until closing of the Transactions (in the case of the unredacted purchase

[60] R.S.O. 1990, c. C.43, s. 137(2).

[61] *Sherman Estate v Donovan,* 2021 SCC 25 at para. 38.

agreements).[62] Courts have acknowledged that there is a public interest in maximizing recoveries in an insolvency that goes beyond the individual case and that disclosure of transaction-related information could undermine the integrity of a sale process.[63]

58. The Receiver respectfully submits that the benefits of sealing the Confidential Appendices greatly outweigh any negative effects that result from restricting public access to the Confidential Appendices on a limited basis and, as such, the sealing relief sought is appropriate.

PART IV – ORDERS REQUESTED

59. For the reasons set out herein, the Receiver respectfully requests that this Court grant the proposed C&I AVO and Residential RVO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of August, 2026.

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[62] Second Report at paras. 11.2 and 11.3 [E740].

[63] *Nuance Pharma* at para. 17; *Danier Leather Inc, Re,* 2016 ONSC 1044 at para. 84; *Elleway Acquisitions Ltd v 4358376 Canada Inc.*, 2013 ONSC 7009 at para. 48.

SCHEDULE "A"

LIST OF AUTHORITIES

1) *Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)

2) *Re Eddie Bauer of Canada* (2009), 57 CBR (5th) 241(Ont. S.C.J. [Commercial List])

3) *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), 12 C.B.R. (4th) 87 (Ont. S.C.J. [Commercial List])

4) *Nuance Pharma Ltd. v. Antibe Therapetics Inc.*, 2025 ONSC 706

5) *Marshallzehr Group Inc. v 2301402 Ontario Limited and Jake's House Community Residences* (20 February 2026) Toronto, Ont Sup Ct J [Commercial List] CV-25-00753367-00CL (Approval and Reverse Vesting Order)

6) *BDC Capital Inc. v Magnum Worldwide Holdings Inc.* (09 January 2026) Toronto, Ont Sup Ct J [Commercial List] CV-25-00753367-00CL (Approval and Reverse Vesting Order)

7) *Harte Gold Corp. (Re)*, 2022 ONSC 653

8) *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 1722

9) *Arrangement relatif à Blackrock Metals Inc.,* 2022 QCCS 2828

10) *Invico Diversified Income Limited Partnership v NewGrange Energy Inc*, 2024 ABKB 214

11) *Nuance Pharma Ltd. v. Antibe Therapetics Inc.* (29 January 2025) Toronto, Ont Sup Ct J [Commercial List] CV-24-00719237-00CL (Approval and Reverse Vesting Order)

12) *In the Matter of a Plan of Compromise or Arrangement of Validus Power Corporation, and Others* (04 January 2024) Toronto, Ont Sup Ct J [Commercial List] CV-23-00705215-00CL (Endorsement of Justice Osborne)

13) *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41

14) *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.,* 2019 ONCA 508

15) *Urbancorp Cumberland 1 GP Inc. (Re),* 2020 ONSC 7920

16) *The Cannabist Company Holdings Inc.; The Cannabist Company Holdings (Canada) Inc. v. East West Bank* (15 April 2026) Toronto, Ont Sup Ct J [Commercial List] CL-26-00000122-0000 (Endorsement of Justice J. Dietrich)

17) *Lydian International Limited (Re)*, 2020 ONSC 4006

18) *Sherman Estate v Donovan,* 2021 SCC 25

19) *Danier Leather Inc, Re,* 2016 ONSC 1044

20) *Elleway Acquisitions Ltd v 4358376 Canada Inc.*, 2013 ONSC 7009

I certify that I am satisfied as to the authenticity of every authority.

Date: August 13, 2026



Signature

SCHEDULE "B"

STATUTORY REFERENCES

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

Courts vested with jurisdiction

183 (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;

(b) [Repealed, 2001, c. 4, s. 33]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;

(e) in the Province of Prince Edward Island, the Supreme Court of the Province;

(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;

(g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and

(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Court may appoint receiver

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.

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

Vesting orders

100 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.

Injunctions and receivers

101(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF AN 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 *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

Court File No: CV-25-00752340-00CL

DEUTSCHE BANK TRUST COMPANY AMERICAS, et al.	-and-	**GSC SOLAR FUND I LP, et al.**
Applicants		Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

FACTUM OF THE RECEIVER
Approval and Vesting Order &
Approval and Reverse Vesting Order
Returnable August 18, 2026

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