

**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
Sale Process Approval Order
Returnable February 27, 2026**

February 24, 2026

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PART I – INTRODUCTION

1. On September 23, 2025 (the “**Appointment Date**”), 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**”, and collectively with the Agent, the “**Applicants**”), Alvarez & Marsal Canada Inc. was appointed by an Order (Appointing Receiver) (as amended, the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), as receiver and manager (in such capacities, the “**Receiver**”), without security, of: (a) all of the assets, undertakings and properties of 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. (collectively, the “**Debtors**”); and (b) the Residential Redirected Account (collectively, the “**Property**”).¹

2. The Receiver files this Factum in support of the Receiver’s motion for a sale process approval order (the “**Sale Process Approval Order**”), among other things:

- (a) approving a sale process (the “**Sale Process**”) in respect of the Grasshopper Business and Property (as defined below);
- (b) authorizing and directing the Receiver and Scotia Capital Inc. (“**Scotia Capital**”), in its capacity as the Receiver’s sale advisor in connection with the Sale Process (in such capacity, the “**Sale Advisor**”), to do all things reasonably necessary or

¹ Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Receivership Order or the First Report of the Receiver dated February 19, 2026 (the “**First Report**”).

desirable to give full effect to the Sale Process and to perform their respective obligations thereunder;

- (c) approving the engagement letter dated February 19, 2026, between the Receiver and the Sale Advisor (the “**Sale Advisor Agreement**”), and the retention of the Sale Advisor under the terms thereof, *nunc pro tunc*, and authorizing and directing the Receiver to make the payments contemplated thereunder when earned and payable in accordance with the terms and conditions of the Sale Advisor Agreement;
- (d) granting a charge on the Property in favour of the Sale Advisor (the “**Sale Advisor Charge**”) as security for the payment of any Completion Fee or Base Fee (each as defined in the Sale Advisor Agreement) that may become payable to the Sale Advisor under the Sale Advisor Agreement; and
- (e) sealing the Confidential Appendix to the First Report, which contains an unredacted version of the Sale Advisor Agreement (the “**Confidential Appendix**”).

3. These receivership proceedings were commenced to stabilize the solar electricity generation business operated by the Debtors and the Non-Debtor Obligors (collectively, the “**Grasshopper Entities**” or “**Grasshopper**”) and to address critical governance, management and technical issues affecting Grasshopper’s portfolio of solar generation projects (the “**Solar Projects**”). The Receiver has made substantial progress on these efforts and believes that now is an appropriate time to commence the Sale Process to canvass the market for one or more sale, investment, recapitalization, refinancing, restructuring or other transactions (each, a

“**Transaction**”) to maximize the value of the business and property of the Grasshopper Entities (the “**Grasshopper Business and Property**”).

4. For the reasons set out herein and in the First Report, the Receiver respectfully requests that this Court grant the proposed Sale Process Approval Order.

PART II – FACTS

A. Background²

5. The Grasshopper Entities directly or indirectly own and operate the Solar Projects, which consist of two primary 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

6. Grasshopper is comprised of a complex corporate structure of corporations and partnerships that own the Solar Projects. Pursuant to the Receivership Order, the Receiver was appointed in respect of eight Debtor entities. The Debtors hold direct or indirect equity interests in 49 subsidiaries and affiliates that constitute the “**Non-Debtor Obligors**” for purposes of the Receivership Order. Although the Receiver is not the receiver of the Non-Debtor Obligors, the Receivership Order contains a number of authorizations and protections in relation to the Non-Debtor Obligors (including a stay of proceedings and authorization for the Receiver to make

² Additional background information regarding the Debtors and the Grasshopper business is set out in the First Report, the Affidavit of Thomas Rorick sworn September 21, 2025 in support of the Applicants’ application for the Receivership Order (the “**Rorick Affidavit**”), and the Pre-Filing Report of the Proposed Receiver dated September 22, 2025 (the “**Pre-Filing Report**”).

³ First Report at para 4.1 [[E420](#)].

payments on behalf of the Non-Debtor Obligors) to preserve normal course business operations during these proceedings.⁴

7. Grasshopper's Residential Portfolio is wholly-owned by the Debtors. The C&I Portfolio is owned by the Non-Debtor Obligors, in which the Debtors hold direct or indirect equity interests. Sixteen 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 Obligors.⁵

8. As further described in the Rorick Affidavit, Grasshopper obtained financing from the Lenders under a credit agreement dated as of March 19, 2018 (as amended and/or restated, the "**Credit Agreement**") that matured on June 29, 2025. The Debtors and the Non-Debtor Obligors granted the Agent a security interest in all or substantially all of their assets to secure the repayment of the Credit Agreement indebtedness. The Agent also has a security interest in the equity interests in the Non-Debtor Obligors held by the Third-Party Project Co-Owners.⁶

9. In the five months since the Appointment Date, the Receiver has made significant efforts to, among other things: (a) transition operations and maintenance and asset administration functions in relation to the Solar Projects to new service providers; (b) identify and begin to implement areas of potential improvement for the Grasshopper business; and (c) assemble the information that will be required by prospective purchasers of Grasshopper. The Receiver is of the

⁴ First Report at para 4.4 [[E420-E421](#)].

⁵ First Report at para 4.4 [[E420-E421](#)].

⁶ First Report at paras 4.3 and 7.17 [[E420](#) and [E451](#)]

view that the Grasshopper business has been stabilized and now is the appropriate time to commence a sale process for the Grasshopper Business and Property.⁷

B. The Proposed Sale Process Approval Order

(i) The Sale Advisor Agreement and the Sale Advisor Charge

10. The proposed Sale Process Approval Order approves the Sale Advisor Agreement and the retention of the Sale Advisor thereunder to assist in the development and implementation of the Sale Process.

11. In preparation for the Sale Process, the Receiver conducted a competitive process to identify and retain an experienced sale advisor with relevant expertise in renewable energy and infrastructure transactions. In December 2025, the Receiver approached a six-party shortlist of potential sale advisors identified by the Receiver, in consultation with the Lenders, as having the requisite expertise and capabilities to act as the sale advisor. The Receiver's solicitation process generated five proposals from prospective advisors.⁸

12. After evaluating the proposals received, the Receiver, in consultation with the Lenders, selected Scotia Capital as the Sale Advisor to assist in the development and implementation of the Sale Process. Scotia Capital was selected as the Sale Advisor based on several factors, including, its credentials, extensive experience in renewable asset transactions, and competitive fee structure.⁹

⁷ First Report at para 7.2 [E436].

⁸ First Report at paras 7.4 and 7.5 [E437].

⁹ First Report at paras 7.6 and 7.7 [E437 and E437-E438].

13. Under the Sale Advisor Agreement, the Sale Advisor is eligible to be paid a Completion Fee or a Base Fee by the Debtors (subject to the requirements in the Sale Advisor Agreement) and to be reimbursed for all reasonable out-of-pocket expenses. The high-level structure of the Completion Fee and the Base Fee – which are mutually exclusive – is as follows:

- (a) A Completion Fee equal to a fixed percentage (the “**Fixed Percentage**”) of Transaction Value, subject to a minimum Completion Fee of \$1,500,000, is payable if Grasshopper completes one or more Transactions for all or substantially all of the Grasshopper Business and Property during the term of the Sale Advisor Agreement or within the twelve months thereafter with a party that executed a non-disclosure agreement during the Sale Process; and
- (b) A Base Fee of \$500,000 is payable if: (i) the Sale Advisor identifies one or more Qualified Bids that, if consummated, would result in the acquisition of substantially all of the business and assets of the Grasshopper Entities; and (ii) the Lenders unreasonably determine not to consent to the Receiver seeking Court approval of such transaction(s).¹⁰

14. The proposed Sale Process Approval Order grants the Sale Advisor Charge as security for the payment of any Completion Fee or Base Fee that may become payable to the Sale Advisor under the Sale Advisor Agreement. The proposed Sale Advisor Charge will rank subordinate in priority to: (a) the Receiver’s Charge and the Receiver’s Borrowing Charge granted under the Receivership Order; and (b) the Encumbrances, if any, prescribed by sections 14.06(7), 81.4(4)

¹⁰ First Report at para 7.8(ii) [[E438-E440](#)].

and 81.6(2) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), and will rank in priority to all other Encumbrances.¹¹

(ii) *The Sale Process*

15. The Receiver, in consultation with the Sale Advisor and the Lenders, has designed the proposed Sale Process to broadly canvass the market and identify all potential Transaction(s), in any form, that will maximize the value of the Grasshopper Business and Property and are acceptable to the Receiver and the Lenders.¹²

16. The proposed Sale Process authorizes the Receiver and the Sale Advisor to canvass market interest for potential Transactions in respect of the Grasshopper Business and Property in whole or in part, including the C&I Portfolio and the Residential Portfolio.¹³

17. A summary of the key stages and milestones of the proposed Sale Process is as follows:¹⁴

Milestone	Date(s)
Phase 1	
Marketing Process and Initial Due Diligence Period	Commencing March 9, 2026
Phase 1 Bid Deadline	5:00 p.m. (Toronto time) on April 30, 2026
Phase 2	
Due Diligence Period for Qualified Bidders	Commencing May 6, 2026
Phase 2 Bid Deadline	5:00 p.m. (Toronto time) on June 25, 2026

¹¹ First Report at para 7.9 [E441].

¹² First Report at para 7.19 [E452].

¹³ First Report at para 7.16 [E451].

¹⁴ First Report at para 7.13 [E442-E443].

18. The proposed Sale Process is a two-phase process that will thoroughly canvass the market and provide interested parties with sufficient time to perform due diligence and submit offers for potential Transactions. The Sale Process was designed to provide maximum flexibility so that the Receiver may react to any circumstances that could arise during the course of the Sale Process and extend timelines or adjust procedures, as necessary, to maximize the prospects of achieving one or more value maximizing Transaction(s) through the Sale Process.¹⁵

19. The proposed Sale Process was developed by the Receiver in consultation with the Sale Advisor and the Receiver's legal counsel. The Lenders were also consulted in the development of the Sale Process and support the commencement of the Sale Process in accordance with its terms.¹⁶

20. The proposed Sale Process will market the business and assets held by all Grasshopper Entities, including the Debtors and the Non-Debtor Obligors. Although the Receiver is not the receiver of the Non-Debtor Obligors, the Receiver is appointed over the direct and indirect equity interests in the Non-Debtor Obligors owned by the Debtors. In addition, the Non-Debtor Obligors have granted the Agent a security interest in all or substantially all of their respective assets to secure the repayment of the Indebtedness.¹⁷

21. As described in the Rorick Affidavit, the Applicants did not seek a receivership order over the Non-Debtor Obligors at the outset of these proceedings in order to preserve normal course business operations and stakeholder interests. However, the Applicants expressly reserved their rights to seek the appointment of a receiver in respect of some or all of the Non-Debtor Obligors

¹⁵ First Report at para 7.21(iii) [E453].

¹⁶ First Report at para 7.21(v) [E453].

¹⁷ First Report at para 7.17 [E451].

and/or the equity interests in the applicable Non-Debtor Obligors held by the Third-Party Project Co-Owners at a later date if such appointment became necessary or appropriate.¹⁸

22. The proposed Sale Process Approval Order authorizes the Receiver to apply to this Court for advice and directions in connection with the Sale Process or the implementation thereof, including to seek to include the Non-Debtor Obligors or other obligors directly within the scope of the receivership if and when the Receiver may consider appropriate in connection with the implementation of the Sale Process or any proposed Transaction(s). The Receiver is not at this time seeking any such relief in connection with the Sale Process Approval Order. The Receiver expects that whether or not any such relief is required will become clear as the Sale Process develops and bidders' views emerge with respect to the structure of potential Transaction(s).¹⁹

PART III– ISSUES, LAW & ANALYSIS

23. The issues to be considered on this motion are whether the Court should grant the Sale Process Approval Order, among other things:

- (a) approving the Sale Process and authorizing the Receiver and the Sale Advisor to implement the Sale Process;
- (b) approving the Sale Advisor Agreement and granting related protections to the Sale Advisor, including the Sale Advisor Charge; and
- (c) sealing the Confidential Appendix.

¹⁸ First Report at para 7.18 [[E451-E452](#)].

¹⁹ First Report at para 7.18 [[E451-E452](#)].

A. The Sale Process Should be Approved

24. Section 243(1) of the BIA provides the Court with broad discretion to grant powers to a receiver, including the authority to take possession and control over the business and property and to take any other action that the court considers advisable.²⁰

25. Although the decision to approve a sale process is distinct from the approval of a resulting sale transaction, courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver is to be assessed in light of the factors that a court will take into account when considering the approval of a proposed sale.²¹ The Ontario Court of Appeal summarized those factors in *Soundair* as follows:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are to be obtained; and
- (d) whether there has been unfairness in the working out of the process.²²

26. In addition to the above *Soundair* factors, the Court must also assess: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (c) whether the sale process

²⁰ BIA, s [243\(1\)](#).

²¹ *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, [2020 ONSC 3517](#) at para [15](#) [*Choice Properties*]; *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#) at para [6](#) [*CCM Master*]; *Royal Bank of Canada v. Soundair Corp* (1991), [4 OR \(3d\) 1 \(CA\)](#) at p 9 [*Soundair*].

²² [Soundair](#) at p 9.

will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.²³

27. In considering sale process matters, courts have held that substantial deference should be given to the business judgement and recommendations of a receiver as a court officer with significant expertise in insolvency proceedings.²⁴

28. The proposed Sale Process was developed by the Receiver in consultation with the Sale Advisor and the Lenders. The Receiver is of the view that the Sale Process is a comprehensive process that will broadly canvass the market in an efficient manner to maximize the interest in, and value of, the Grasshopper Business and Property.²⁵ In particular, the Receiver notes that:

- (a) **The Sale Process is commercially reasonable.** The Sale Process is commercially reasonable, as it will canvass the market for all forms of executable Transaction(s) during the 108 days between the formal commencement of the Sale Process and the Phase 2 Bid Deadline.²⁶ This includes parties known to the Sale Advisor or the Receiver as having a potential interest in the Grasshopper Business and Property, as well as other parties that express an interest in participating in the Sale Process.²⁷ The Sale Advisor, under the supervision of the Receiver, will establish and populate a data room developed for the Sale Process, which will be made available to all

²³ *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 5338](#) at paras 7–8; *Choice Properties* at para 16; *CCM Master* at para 6.

²⁴ *Marchant Realty Partners Inc v. 2407553 Ontario Inc.*, [2021 ONCA 375](#) at paras 10, 15 and 19. See also *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#) at paras 43–45.

²⁵ First Report at paras 7.21(ii) and 7.21(v) [[E453](#)].

²⁶ First Report at para 7.21(iii) [[E453](#)].

²⁷ First Report at para 7.14 [[E443-E449](#)].

Participating Bidders who execute a non-disclosure agreement.²⁸ The Sale Process is a two-phase process that has a framework similar to other sale processes approved in other Canadian insolvency proceedings.²⁹ Further, the completion of any Transaction(s) arising from the Sale Process will remain subject to Court approval at a subsequent motion.

- (b) **The Sale Process optimizes the chances of identifying the best available Transaction(s).** The structure and proposed timelines of the Sale Process are designed to enable the Receiver and the Sale Advisor to canvass the market for Transaction(s) broadly, while maintaining an efficient process that provides interested parties with the necessary degree of certainty.³⁰ The Sale Process was developed by the Receiver in consultation with the Sale Advisor, which has extensive sell-side experience in renewable asset transactions. The Sale Process authorizes the Receiver to waive strict compliance with the terms of the Sale Process or modify the terms thereof, in its reasonable business judgement and with the consent of the Lenders. Such discretion will ensure that the Receiver and the Sale Advisor have the flexibility to adapt the Sale Process in response to market interest and developments that may arise during the Sale Process, all with a view to maximizing the value of the Grasshopper Business and Property.³¹

²⁸ First Report at para 7.14 [E443-E449].

²⁹ See e.g., *Keb Hana Bank v. Mizrahi Commercial (The One) LP, et al.* (6 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Approval of SISP\)](#)) at Schedule “A” [*The One SISP Approval Order*]; *Government of Yukon v. Victoria Gold Corp.* (25 June 2025), Ont Sup Ct J [Commercial List] CV-24-00725681-00CL ([Order \(Approval of Sale Process\)](#)) at Schedule “A” [*VGC Sale Process Approval Order*].

³⁰ First Report at paras 7.21(ii) and 7.14 [E453 and E443-E449].

³¹ First Report at para 7.14 [E443-E449].

- (c) **The interests of all parties have been considered.** In developing the Sale Process, the Receiver considered the interests of all stakeholders and developed a process designed to maximize the interest in, and value of, the Grasshopper Business and Property.³² The terms of the Sale Process were developed with input from, and are supported, by the Lenders, who are the senior-ranking secured creditors and thus the primary economic stakeholder of the Grasshopper Entities.³³ The Sale Process provides that, in assessing bids submitted in the Sale Process, the Receiver will consider, among other things, the effect a proposed Transaction will have on stakeholders of the Grasshopper Entities, including the Lenders, landlords of Solar Projects, and Third-Party Project Co-Owners.³⁴

29. As set forth in the Sale Process, the Lenders have irrevocably confirmed to the Receiver that they will not be submitting a bid in the Sale Process; however, the Lenders reserve the right to submit a bid (including but not limited to a credit bid) if the Sale Process is terminated by the Receiver in accordance with its terms. In light of the Lenders' confirmation that they will not be submitting a bid in the Sale Process, the Receiver believes that the information sharing provisions and consultation and consent rights in favour of the Lenders in the Sale Process are appropriate in the circumstances.³⁵

30. For the reasons outlined above and in the First Report, the Receiver respectfully submits that the proposed Sale Process is reasonable and appropriate in the circumstances and will

³² First Report at para 7.3 [[E436-E437](#)].

³³ First Report at para 7.21(v) [[E453](#)].

³⁴ First Report at para 7.14 [[E443-E449](#)]; Sale Process at para. 32(g) [[E549](#)].

³⁵ First Report at para 7.21(vi) [[E454](#)].

maximize the likelihood of obtaining the best available transaction(s) available in respect of the Grasshopper Business and Property.

B. The Sale Advisor Agreement and the Sale Advisor Charge Should be Approved

31. The Court's jurisdiction to approve the Sale Advisor Agreement is confirmed in the Receivership Order, which directs that the Receiver is empowered to engage advisors to assist with the exercise of the Receiver's powers and mandate.³⁶ In addition, the broad discretion contained in section 243(1)(c) of the BIA provides the statutory basis for the Court to approve the Receiver's engagement of the Sale Advisor and, by extension, the related Sale Advisor Charge.³⁷

32. This Court has regularly exercised its discretion to authorize Court-appointed receivers to retain sale advisors and brokers to assist with a sale process.³⁸ This Court has also approved priority charges in favour of sale process advisors in the context of receivership and other insolvency proceedings.³⁹

33. In the present case, the Receiver believes that the engagement of a sale advisor is appropriate having regard to the scope and complexity of the Grasshopper Business and Property and the industry-specific expertise necessary to conduct the Sale Process. The Sale Advisor will

³⁶ Receivership Order at para 4(f) [[E461](#)].

³⁷ BIA, s [243\(1\)\(c\)](#). See e.g., *Keb Hana Bank v. Mizrahi Commercial (The One) LP, et al.* (11 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Endorsement of Justice Osborne](#)) at para 42.

³⁸ See, e.g., [The One SISP Approval Order](#) at para 3; [VGC Sale Process Approval Order](#) at para 3; *Victoria Avenue Holdings Inc et al* (29 October 2021), Ont Sup Ct J [Commercial List] CV-21-00665375-00CL ([Order \(Approval of Broker Engagement, Sale Process and Ancillary Matters\)](#)) at para 2; *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL ([Amended Sale Process Approval Order](#)) at para 4.

³⁹ See e.g., [VGC Sale Process Approval Order](#) at para 4; *Re Contract Pharmaceuticals Limited et al.* (22 December 2023), Ont Sup Ct J [Commercial List] CV-23-00711401-00CL ([Amended and Restated Initial Order](#)) at para 36; *Re Just Energy Group Inc et al* (19 March 2021), Ont Sup Ct J [Commercial List] CV-21-00658423-00CL ([Amended and Restated Initial Order](#)) at para 52.

play a critical role in the proposed Sale Process, including in conducting outreach to potential bidders, facilitating the provision of due diligence information, and assisting in negotiating and structuring the definitive terms of any resulting Transaction(s).⁴⁰

34. The Receiver submits that approval of the Sale Advisor Agreement is reasonable and appropriate in the circumstances, including for the following reasons:

- (a) the Receiver conducted a competitive process for the sale advisor role, which yielded five proposals and resulted in the selection of Scotia Capital as Sale Advisor following the review of proposals and meetings with a select number of potential sale advisors to further assess their respective approaches and capabilities;⁴¹
- (b) the Receiver consulted with the Lenders throughout the sale advisor selection process, and the Lenders support the engagement of the Sale Advisor in accordance with the terms of the Sale Advisor Agreement;⁴²
- (c) the fee structure under the Sale Advisor Agreement incentivizes the Sale Advisor to identify one or more Transactions for the sale of all or substantially all of the Grasshopper Business and Property. The Completion Fee or Base Fee, as applicable, is a “success fee” that is only payable at the conclusion of the Sale Process; and

⁴⁰ First Report at paras 7.8(i) and 7.11 [[E438](#) and [E442](#)].

⁴¹ First Report at paras 7.4 to 7.7 [[E437-E438](#)].

⁴² First Report at paras 7.6 and 7.11 [[E437-E442](#)].

- (d) Scotia Capital is highly qualified and suitable to act as the Sale Advisor, including based on its extensive sell-side advisory experience in renewable asset transactions, its broad and extensive industry network, and the credentials of its proposed team.⁴³

35. The proposed Sale Process Approval Order provides for the granting of the Sale Advisor Charge as security for the payment of any Completion Fee or Base Fee that may become payable to the Sale Advisor under the Sale Advisor Agreement. As noted, the Completion Fee and the Base Fee are mutually exclusive, meaning that the Sale Advisor is not entitled to receive both the Completion Fee and the Base Fee. The proposed Sale Advisor Charge will rank subordinate in priority to: (a) the Receiver's Charge and the Receiver's Borrowing Charge granted under the Receivership Order; and (b) the Encumbrances, if any, prescribed by sections 14.06(7), 81.4(4) and 81.6(2) of the BIA, and will rank in priority to all other Encumbrances, including the Encumbrances securing the Indebtedness under the Credit Agreement. The Lenders do not oppose the granting of the Sale Advisor Charge.

36. The Sale Advisor has informed the Receiver that it requires the Sale Advisor Charge and other protections in the proposed Sale Process Approval Order providing that the Sale Advisor and its representatives shall have no liability in connection with or as a result of the Sale Process (other than arising from their gross negligence or wilful misconduct) and that the Sale Advisor shall not take possession or be deemed to take possession of the Property.⁴⁴

37. The Receiver notes that the Sale Advisor is wholly-owned by The Bank of Nova Scotia, which is a Lender under the Credit Agreement. Deutsche Bank AG, Canada Branch is the other

⁴³ First Report at para 7.7 [[E437-E438](#)].

⁴⁴ First Report at para 7.8(iii) [[E440](#)].

Lender under the Credit Agreement and supports the engagement of Scotia Capital as the Sale Advisor. The Sale Advisor Agreement contains provisions ensuring the separateness of the Sale Advisor and Lender functions, including that Scotia Capital will, in accordance with its standard procedures, establish ethical screens to separate the Sale Advisor and Lender roles within the institution. In *Victoria Gold*, this Court approved the engagement of a sale advisor whose bank affiliate was a pre-filing lender of the debtor, under similar circumstances and with similar protections to ensure the separateness of the advisor and lender functions.⁴⁵

38. In summary and for the foregoing reasons, the Receiver submits that it is appropriate to approve the Sale Advisor Agreement and grant the Sale Advisor Charge pursuant to the terms of the proposed Sale Process Approval Order.

C. Sealing the Confidential Appendix is Appropriate

39. The proposed Sale Process Approval Order provides for the sealing of the Confidential Appendix, which contains an unredacted version of the Sale Advisor Agreement, pending the closing of a Transaction entered into pursuant to the Sale Process.

40. The Sale Advisor Agreement attached to the First Report on a public basis contains a redaction of the quantum of the Fixed Percentage. Under the Sale Advisor Agreement, the Fixed Percentage is multiplied by Transaction Value to determine the quantum of the Completion Fee. Importantly, the unredacted version of the Sale Advisor Agreement and the First Report disclose that the minimum Completion Fee is \$1,500,000, which, if divided by the Fixed Percentage,

⁴⁵ *Government of Yukon v. Victoria Gold Corp.* (16 June 2025), Ont Sup Ct J [Commercial List] CV-24-00725681-00CL ([Fifth Report of the Receiver](#)) at para 82(c).

provides a Transaction Value that potential bidders may view as a threshold. The effect of the proposed sealing order is to maintain the confidentiality of the Fixed Percentage until the completion of the Sale Process.

41. This Court has discretion pursuant to section 137(2) of the *Courts of Justice Act* to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.⁴⁶

42. In *Sherman Estate*, the Supreme Court of Canada held that three prerequisites must be established in order 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 reasonable alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.⁴⁷

43. The Receiver and the Sale Advisor believe that disclosure of the Fixed Percentage could cause bidders to form a view with respect to the potential value range of Transactions, which would harm the competitive tension and effectiveness of the Sale Process. The Sale Process is more likely to maximize value where bidders form their expectations as to value based on their due diligence and review of the Grasshopper Business and Property, rather than anchoring on an advisor compensation metric established at the outset of the Sale Process. The temporary sealing of the Confidential Appendix is necessary to preserve the integrity of the Sale Process and maximize recoveries of the Grasshopper Business and Property for the benefit of the Debtors' stakeholders.⁴⁸

⁴⁶ *Courts of Justice Act*, [R.S.C. 1990, c. C.43, s. 137\(2\)](#).

⁴⁷ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para 38.

⁴⁸ First Report at para 7.10 [[E441-E442](#)].

44. Courts have acknowledged that there is a public interest in maximizing recoveries in an insolvency case and that the disclosure of valuations and transaction-related information prior to the completion of a transaction can undermine the integrity of the sale process.⁴⁹

45. As a matter of proportionality, the benefits of the proposed sealing order greatly outweigh any negative effects that result from temporarily limiting public access to the Confidential Appendix. The unredacted version of the Sale Advisor Agreement and the First Report disclose that the minimum Completion Fee is \$1,500,000. The Lenders – who are the primary economic stakeholder of the Grasshopper Entities and whose Indebtedness will be subordinated to the Sale Advisor Charge – are aware of the Fixed Percentage and support the approval of the Sale Advisor Agreement. The sealing is temporary in nature and will cease to apply once one or more Transactions are completed in the Sale Process.

46. Accordingly, the Receiver submits that sealing of the Confidential Appendix is appropriate, necessary and proportional in the circumstances.

PART IV– ORDERS REQUESTED

47. For the reasons set out herein, the Receiver respectfully requests that this Court grant the proposed Sale Process Approval Order.

⁴⁹ *Danier Leather Inc, Re*, [2016 ONSC 1044](#) at para [84](#); *Elleway Acquisitions Ltd v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) at para [48](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of
February, 2026.

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Lawyers for the Receiver

SCHEDULE “A”

LIST OF AUTHORITIES

- 1) *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, [2020 ONSC 3517](#)
- 2) *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
- 3) *Royal Bank of Canada v. Soundair Corp* (1991), [4 OR \(3d\) 1 \(CA\)](#)
- 4) *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 5338](#)
- 5) *Marchant Realty Partners Inc v. 2407553 Ontario Inc.*, [2021 ONCA 375](#)
- 6) *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#)
- 7) *Keb Hana Bank v. Mizrahi Commercial (The One) LP, et al.* (6 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Approval of SISP\)](#))
- 8) *Government of Yukon v. Victoria Gold Corp.* (25 June 2025), Ont Sup Ct J [Commercial List] CV-24-00725681-00CL ([Order \(Approval of Sale Process\)](#))
- 9) *Keb Hana Bank v. Mizrahi Commercial (The One) LP, et al.* (11 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Endorsement of Justice Osborne](#))
- 10) *Victoria Avenue Holdings Inc. et al.* (29 October 2021), Ont Sup Ct J [Commercial List] CV-21-00665375-00CL ([Order \(Approval of Broker Engagement, Sale Process and Ancillary Matters\)](#))
- 11) *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL ([Amended Sale Process Approval Order](#))
- 12) *Re Contract Pharmaceuticals Limited et al.* (22 December 2023), Ont Sup Ct J [Commercial List] CV-23-00711401-00CL ([Amended and Restated Initial Order](#))
- 13) *Re Just Energy Group Inc et al* (19 March 2021), Ont Sup Ct J [Commercial List] CV-21-00658423-00CL ([Amended and Restated Initial Order](#))
- 14) *Government of Yukon v. Victoria Gold Corp.* (16 June 2025), Ont Sup Ct J [Commercial List] CV-24-00725681-00CL ([Fifth Report of the Receiver](#)) at para 82(c)
- 15) *Sherman Estate v. Donovan*, [2021 SCC 25](#)
- 16) *Danier Leather Inc, Re*, [2016 ONSC 1044](#)
- 17) *Elleway Acquisitions Ltd v. 4358376 Canada Inc.*, [2013 ONSC 7009](#)

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

Date: February 24, 2026

A handwritten signature in black ink, consisting of stylized initials 'JS'.

Signature

SCHEDULE “B”

STATUTORY REFERENCES

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

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

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
Sale Process Approval Order
Returnable February 27, 2026**

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