

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N :**

**PIVOT FINANCIAL I LIMITED PARTNERSHIP**

Applicant

- and -

**BRIGHTPATH CAPITAL CORPORATION**

Respondent

**IN THE MATTER OF an application under subsection 243(1) of the  
*Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section  
101 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended.**

**FACTUM OF THE APPLICANT,  
PIVOT FINANCIAL I LIMITED PARTNERSHIP**

April 9, 2026

**DLA PIPER (CANADA) LLP**  
Suite 5100, Bay Adelaide – West Tower  
333 Bay Street  
Toronto, ON M5H 2R2

**Edmond Lamek** (LSO #33338U)  
Tel: 416-365-3444  
[edmond.lamек@dlapiper.com](mailto:edmond.lamек@dlapiper.com)

*Counsel to the Applicant, Pivot Financial I  
Limited Partnership*

**TO: SERVICE LIST**

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## PART I – OVERVIEW

1. Brightpath Capital Corporation (“**Brightpath**” or the “**Debtor**”) has been in default under its loan arrangements with Pivot Financial I Limited Partnership (“**Pivot LP**” or the “**Applicant**”) since April 2025, or earlier. The Applicant holds perfected security interests in all of the Debtor’s Property (as defined below), including any residual interest it may have in certain Securitization Financing Facilities (as defined herein), pursuant to its registrations under the Ontario *Personal Property Security Act*.

2. Following the issuance of demand letters and the Pivot NITES (as defined herein) pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada), as amended (the “**BIA**”) by Pivot LP, the Debtor has failed to repay the outstanding debt or adhere to the terms of the Forbearance Agreement (as defined herein).

3. As of March 31, 2026, an aggregate principal amount of \$9,489,423.08, plus accruing interest, fees, and costs, was owing to Pivot LP under: the Senior Credit Agreement (as defined below); and \$6,140,711.17, plus accruing interest, fees, and costs, was owing under the Subordinate Demand Note (as defined herein) (together “**Indebtedness**”).

4. Accordingly, Pivot LP is bringing this Application seeking, an order (the “**Receivership Order**”), *inter alias*:

- (a) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Brightpath, including all proceeds thereof (the “**Property**”), pursuant to subsection 243(1) of BIA, and section 101 of the *Court of Justice Act* (Ontario), as amended (the “**CJA**”);

- (b) granting a first-ranking, super-priority charge (the “**Receiver’s Charge**”) over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and disbursements in respect of these receivership proceedings; and
- (c) granting a second-ranking, super-priority charge (the “**Receiver’s Borrowings Charge**”) over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver.

5. Pivot LP has the contractual right to appoint a receiver. The ten (10) day statutory period under subsection 244(1) of the BIA has long expired. In addition, Pivot LP has lost all confidence and trust in the management of the Debtor to continue to satisfy its obligations to Pivot LP as a result of the material adverse changes to the Debtor’s financial affairs. In the circumstances, it is just and convenient to appoint KSV as the receiver of the Property.

6. As of the date hereof, the Applicant is not aware of any stakeholder who is opposed to these proposed Receivership proceedings.

## **PART II – FACTUAL BACKGROUND**

7. The facts underlying this Application are more fully set out in the Affidavit of Daniel Flaro, sworn April 8, 2026 (the “**Flaro Affidavit**”).<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Flaro Affidavit.

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<sup>1</sup> Affidavit of Daniel Flaro, sworn April 8, 2026 [Flaro Affidavit], Applicant’s Application Record dated April 8, 2026 at Tab 2 [Application Record].

## A. Background

8. The Debtor was incorporated under the *Canada Business Corporations Act* (the “**CBCA**”), and was subsequently amalgamated under the CBCA as ‘Brightpath Capital Corporation’.<sup>2</sup> The Debtor’s registered and head office is located in Ontario, Canada.

9. The Debtor originates and administers first and second mortgage loans, secured by residential properties and either funding such loans directly, or co-lending with other investors or third-party co-lenders. It is a licensed mortgage brokerage in Ontario and British Columbia, and a mortgage administrator in Ontario.<sup>3</sup> The Debtor’s also facilitates the funding of mortgage loans and certain eligible receivables (the “**Securitization Financing Facilities**”), through special purpose securitization vehicles (the “**Securitization Parties**”) from third party capital providers (the “**Securitization Funders**”).<sup>4</sup>

10. To further finance its business, the Debtor has approximately 141 separate noteholders (collectively, the “**Unsecured Noteholders**”) collectively holding promissory notes totaling approximately \$59,600,000 (collectively, the “**Unsecured Notes**”). The Unsecured Notes are postponed and subordinated to the Indebtedness and Security and subject to a standstill.<sup>5</sup>

11. As at early 2026:

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<sup>2</sup> Flaro Affidavit, *ibid* at para 4, Application Record at Tab 2.

<sup>3</sup> Flaro Affidavit, *ibid* at para 5, Application Record at Tab 2.

<sup>4</sup> Flaro Affidavit, *ibid* at para 7, Application Record at Tab 2.

<sup>5</sup> Flaro Affidavit, *ibid* at para 78, Application Record at Tab 2.

- (a) approximately \$59.6 million in principal was owing to Unsecured Noteholders (as defined herein), plus, approximately \$5 million in accrued interest was outstanding to Unsecured Noteholders; and
- (b) the Indebtedness totaling approximately \$15.6 million remained outstanding.<sup>6</sup>

### Debtor's Assets

12. The Debtor currently holds a direct interest in approximately 19 mortgage loans (the “**Direct Mortgage Portfolio**”), representing an aggregate principal balance of approximately \$9.7 million and forming the Debtor’s principal asset.<sup>7</sup> All of the mortgages comprising the Direct Mortgage Portfolio are currently subject to power of sale proceedings.<sup>8</sup>

13. In addition to its direct mortgage holdings, the Debtor currently retains a portion of its Residual Interest in the Securitization Financing Facility of LP II (the “**Remaining Residual Interest**”).

14. In light of the foregoing, the Debtor’s asset base is largely comprised of distressed mortgage loans and the Remaining Residual Interest, the value of recovery is dependent on active management, Securitization Funders, enforcement proceedings and prevailing real estate market conditions.<sup>9</sup>

## **B. Security Agreements and Current Indebtedness**

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<sup>6</sup> Flaro Affidavit, *ibid* at para 11, Application Record at Tab 2.

<sup>7</sup> Flaro Affidavit, *ibid* at para 23, Application Record at Tab 2.

<sup>8</sup> Flaro Affidavit, *ibid* at para 24, Application Record at Tab 2.

<sup>9</sup> Flaro Affidavit, *ibid* at para 29, Application Record at Tab 2.

### ***Senior Credit Agreement***

15. In connection with its operations, Pivot LP, as assignee of Pivot Financial Inc. (“**PFI**”), as lender, the Debtor, as borrower, and the shareholders of the Debtor as at September 30, 2021, as guarantors, entered into an amended and restated credit agreement dated September 30, 2021, as amended on April 28, 2022, August 15, 2022 and April 1, 2025 (collectively, the “**Senior Credit Agreement**”).<sup>10</sup>

16. Pursuant to the Senior Credit Agreement, Pivot LP extended a revolving loan facility (the “**Senior Facility**”) to the Debtor in a maximum principal amount of \$60,000,000.<sup>11</sup>

17. Under the terms of the Senior Credit Agreement, the Senior Facility: (a) bears interest at the Prime Rate plus 5.5% (Floor rate of 9.5%) per annum; and (b) matured on September 30, 2025. As of March 31, 2026, the total indebtedness under the Senior Credit Agreement was \$9,489,423.08 (the “**Senior Facility Indebtedness**”), plus accruing interest, fees and costs.<sup>12</sup>

18. As general and continuing security for the payment and performance of the Senior Facility Indebtedness, the Debtor granted various security to Pivot LP (collectively, the “**Senior Security**”), including, among other things:

- (a) an amended and restated general security agreement, dated as of September 30, 2021, granted by the Debtor in favour of Pivot LP (the “**Senior GSA**”), therein

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<sup>10</sup> Flaro Affidavit, *ibid* at para 34, Application Record at Tab 2.

<sup>11</sup> Flaro Affidavit, *ibid* at para 36, Application Record at Tab 2.

<sup>12</sup> Flaro Affidavit, *ibid* at para 39, Application Record at Tab 2.

amending and restating that certain general security agreement dated as of September 27, 2018, granted by the Debtor in favour of PFI; and

- (b) a blocked account agreement made as of April 12, 2022, effective as of September 30, 2021, between the Debtor, Pivot LP and the Bank of Montreal.<sup>13</sup>

### ***The Subordinate Demand Note***

19. The Debtor also issued in favour of Pivot LP a demand promissory note dated August 30, 2024 (the “**Subordinate Demand Note**”). The Subordinate Demand Note amends, restates, modifies, and consolidates: (i) certain promissory notes issued by the Debtor in favour of PFI (collectively, the “**Original Demand Notes**”); and (ii) a promissory note issued by the Debtor in favour of Pivot LP dated June 15, 2022, in each case as amended, supplemented, restated, or otherwise modified from time to time.<sup>14</sup>

20. Principal advances under the Subordinate Demand Note bear interest at 15% per annum. As of March 31, 2026, the total indebtedness under the Subordinate Demand Note was \$6,140,711.17, plus accruing interest, fees and costs.<sup>15</sup>

21. In connection with the Subordinate Demand Note, the Debtor granted the following security (collectively, the “**Subordinate Note GSAs**”, and together with the Senior Facility Security, the “**Security**”): (a) a general security agreement dated as of August 16, 2018, granted by the Debtor in favour of PFI, as assigned by PFI to Pivot LP; and (b) the Senior GSA.<sup>16</sup>

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<sup>13</sup> Flaro Affidavit, *ibid* at para 40, Application Record at Tab 2.

<sup>14</sup> Flaro Affidavit, *ibid* at paras 30, 41, Application Record at Tab 2.

<sup>15</sup> Flaro Affidavit, *ibid* at para 42, Application Record at Tab 2.

<sup>16</sup> Flaro Affidavit, *ibid* at para 43, Application Record at Tab 2.

22. The security interest granted to PFI in connection with the Original Senior Loan Agreement and the Original Demand Notes was first registered in the Ontario Personal Property Security Registration System on April 26, 2018 (the “**Original PPR Registration**”), creating a first-ranking security interest. On September 29, 2021, PFI assigned the Original PPR Registration to Pivot LP.<sup>17</sup>

### **C. Liquidity Challenges, Defaults and Demands**

23. By April 2025, the Debtor and its auditors determined that the Debtor had a bad debt expense in excess of \$15 million for the fiscal year ending December 31, 2024 (the “**2024 Write-offs**”). The 2024 Write-offs, along with the Debtor’s secured and unsecured debt obligations, resulted in the auditors including a going concern qualification in the Debtor’s 2024 annual financial statements.<sup>18</sup>

24. The 2024 Write-offs and going concern qualification resulted in the Debtor defaulting under its obligations under the Senior Credit Agreement (the “**Initial Default**”).<sup>19</sup>

25. The Debtor’s management shortly thereafter advised Pivot LP of the Initial Default, stopped payment of interest and principal in respect of the Unsecured Notes, and commenced a strategic process to address and improve the Debtor’s capital structure and debt burden.

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<sup>17</sup> Flaro Affidavit, *ibid* at para 44, Application Record at Tab 2.

<sup>18</sup> Flaro Affidavit, *ibid* at para 56, Application Record at Tab 2.

<sup>19</sup> Flaro Affidavit, *ibid*, Application Record at Tab 2.

26. Following the completion of the strategic process, the Debtor and its advisors determined that the best available option to improve the Debtor's liquidity and balance sheet was to implement the Proposed Arrangement (as defined herein).<sup>20</sup>

27. Pivot LP engaged in discussions with respect to the Proposed Arrangement from April 2025 until November 2025.<sup>21</sup> As such discussions progressed, on October 31, 2025, Pivot LP, through its counsel, DLA Piper (Canada) LLP ("**DLA**"), issued a demand letter to the Debtor, confirming that the Debtor was in default under the Senior Credit Agreement and corresponding security, and further demanded repayment of the Senior Facility Indebtedness (the "**Senior Demand Letter**"). The Senior Demand Letter was issued contemporaneously with notices of intention to enforce security in accordance with section 244 of the BIA (the "**Senior NITE**").<sup>22</sup>

28. The Senior Demand Letter advised that the Debtor was in default of its obligations under the Senior Credit Agreement, including, without limitation, the Debtor's failure to observe or perform its financial covenants, the occurrence of specified events of default, and material adverse circumstances affecting its financial condition. (collectively, the "**Listed Senior Defaults**").<sup>23</sup>

29. On October 31, 2025, Pivot LP, through its counsel DLA, also issued a demand letter, the ("**Subordinate Demand Letter**"), to the Debtor for the repayment of the Subordinate Indebtedness, and enclosed a NITE delivered in accordance with section 244 of the BIA (the "**Subordinate NITE**", and together with the Senior NITE, the "**Pivot NITES**").<sup>24</sup>

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<sup>20</sup> Flaro Affidavit, *ibid* at paras 57-58, Application Record at Tab 2.

<sup>21</sup> Flaro Affidavit, *ibid* at para 59, Application Record at Tab 2.

<sup>22</sup> Flaro Affidavit, *ibid* at para 60, Application Record at Tab 2.

<sup>23</sup> Flaro Affidavit, *ibid* at para 61, Application Record at Tab 2.

<sup>24</sup> Flaro Affidavit, *ibid* at para 64, Application Record at Tab 2.

30. The Subordinate Demand Letter advised that the occurrence of the Listed Senior Defaults resulted in the Debtor being in default under the Subordinate Demand Note and Subordinate GSAs (the “**Subordinate Defaults**”).<sup>25</sup>

31. The notice period provided for pursuant to the Pivot NITES has expired, and Pivot LP is entitled to exercise all of its rights and remedies in respect of both:

- (a) the Listed Senior Defaults, including the enforcement of its rights and interests in the collateral granted under the Senior Security, including the appointment of the proposed Receiver; and
- (b) the Subordinate Defaults, including the enforcement of its rights and interests in the collateral granted under the Subordinate GSAs, and in each case by the appointment of the proposed Receiver.<sup>26</sup>

32. Notwithstanding these defaults and enforcement rights following the delivery of the Pivot NITES, the Debtor, Pivot LP and the Securitization Funders entered into a series of coordinated forbearance agreements (the “**Forbearance Agreements**”). Pivot LP and the Debtor, among others, entered into a Forbearance Agreement dated November 25, 2025 (the “**Pivot Forbearance Agreement**”).<sup>27</sup>

33. The purpose of the Pivot Forbearance Agreement was to provide the Debtor with additional funding, Pivot’s consent, and a standstill in order to successfully complete the Proposed

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<sup>25</sup> Flaro Affidavit, *ibid* at para 65, Application Record at Tab 2.

<sup>26</sup> Flaro Affidavit, *ibid* at para 66, Application Record at Tab 2.

<sup>27</sup> Flaro Affidavit, *ibid* at paras 67-68,, Application Record at Tab 2.

Arrangement (as defined herein) and ultimately emerge as a going-concern enterprise, for the benefit of its stakeholders.<sup>28</sup>

**D. The Abandoned Proposed Arrangement**

34. On February 11, 2026, the Debtor filed an amended notice of application for an interim order in connection with the Proposed Arrangement (the “**CBCA Application**”) to be heard by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).<sup>29</sup>

35. The stated purpose of the Proposed Arrangement was to reduce the Debtor’s indebtedness, improve liquidity, and allow the Debtor to continue as a going-concern. The Debtor advised that, absent such a transaction, there was a significant risk that the Debtor would commence insolvency proceedings and that the Unsecured Noteholders would be unlikely to receive any recovery in a liquidation.<sup>30</sup>

36. The Proposed Arrangement was ultimately abandoned by the Debtor without Pivot LP’s consent following a document production request by certain Unsecured Noteholders (collectively, the “**Ad Hoc Group of Noteholders**”).

37. Following this decision by the Debtor, on March 30, 2026, the Ad Hoc Group of Noteholders served and filed with this Court an Application Record seeking a declaration that the Debtor has conducted its affairs in a manner that is oppressive and an interim Order to address the Production Request, among other things (the “**Ad Hoc Group of Noteholders Application**”).

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<sup>28</sup> Flaro Affidavit, *ibid* at para 69, Application Record at Tab 2.

<sup>29</sup> Flaro Affidavit, *ibid* at para 77, Application Record at Tab 2.

<sup>30</sup> Flaro Affidavit, *ibid* at para 79, Application Record at Tab 2.

38. As of the date hereof, the Debtor remains highly leveraged, and continues to operate under significant financial distress. In these circumstances, a receivership is required to preserve and realize upon the Debtor's assets for the benefit of its stakeholders.<sup>31</sup>

### **PART III – ISSUE**

39. The issue before this Court is whether it is just or convenient to appoint the proposed Receiver.

### **PART IV – LAW & ARGUMENT**

#### **B. This Court has the Jurisdiction to Appoint the Proposed Receiver**

40. The Applicant submits that each of the technical requirements enumerated under the BIA for the appointment of the proposed Receiver are satisfied, accordingly this Court has the jurisdiction to appoint the proposed Receiver.<sup>32</sup> In particular:

- (a) the Applicant is a senior secured creditor. The Applicant holds perfected security interests pursuant to its registrations under the PPSA;
- (b) the Applicant has made formal demand for repayment of the full Indebtedness, being approximately, \$15.6 million, which remains outstanding as of the date hereof. Accordingly, the Debtor is unable to meet or has ceased paying its

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<sup>31</sup> Flaro Affidavit, *ibid*, Application Record at Tab 2.

<sup>32</sup> *Bankruptcy and Insolvency Act*, [RSC 1985, c. B-3](#) s 243-244 [BIA]; *Courts of Justice Act*, [RSO 1990, c. C. 43 s 101](#) [CJA]; *Meridian v Okje Cho & Family Enterprise Ltd*, [2021 ONSC 3755](#) at [para 19](#) [*Meridian*]; *Elleway Acquisitions Ltd v Cruise Professionals Ltd*, [2013 ONSC 6866](#) at [paras 24-25](#) [*Elleway*].

obligations as they generally become due and therefore meets the definition of an insolvent person under the BIA;

- (c) the Applicant has delivered the NITES in accordance with section 244 of the BIA and the 10-day notice periods prescribed thereunder have long-since expire; and
- (d) KSV, is a trustee as defined in the BIA, and has consented to act as receiver;
- (e) Toronto is the appropriate and convenient forum for these proceedings given that the Debtor's principal asset, being the Direct Mortgage Portfolio, are located in the Greater Toronto Area and Southern Ontario; and
- (f) this Court is well-versed in the Debtor and its stakeholders, as the CBCA Application and the Ad Hoc Group of Noteholders Application were each commenced and addressed before this Court, further supporting the appropriateness of these proceedings being heard in this Court.<sup>33</sup>

## **B. The Proposed Receiver's Appointment is Just and Convenient**

41. Subsection 243(1) of the BIA provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "just or convenient" to do so.<sup>34</sup> Similarly, the CJA enables the court to appoint a receiver where such appointment is "just or convenient."<sup>35</sup>

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<sup>33</sup> Flaro Affidavit, *ibid* at paras 86-90, Application Record at Tab 2.

<sup>34</sup> BIA, *supra* at [s 243\(1\)](#).

<sup>35</sup> CJA, *supra* at [s 101](#).

42. In determining whether it is “just or convenient” to appoint a receiver under either the BIA or the CJA, courts have applied the considerations detailed in *Bank of Nova Scotia v. Freure Village on Clair Creek*.<sup>36</sup> In that case, the Honourable Justice Blair (as he then was) held that the Court must have regard to all of the circumstances, and in particular the nature of the property and the rights and interests of all parties in relation thereto, including the rights of the secured creditor under its security.<sup>37</sup>

43. Neither the BIA nor the CJA set out a list of factors to be considered when determining whether it is just and convenient to appoint a receiver. Nevertheless, in evaluating whether the appointment of a receiver is appropriate, this Court has considered a range of non-exhaustive factors, including the following:

- (a) whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- (c) the nature of the property;

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<sup>36</sup> *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996 CanLII 8258 \(ONSC\)](#) at [para 10](#) [*Freure Village*]. See also, *Logpin Investments Limited v. Sanford Sussman*, [2025 ONSC 3369 \(CanLII\)](#) at [para 24](#). *Elleway*, *supra* at [para 26](#).

<sup>37</sup> *Freure Village*, *ibid.*

- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) fact that the creditor has a right to appointment under the loan documentation;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- (i) the principle that the appointment of a receiver should be granted cautiously;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and

(p) the goal of facilitating the duties of the receiver.<sup>38</sup>

44. It is not essential that the moving party/secured creditor establish that it will suffer irreparable harm if a receiver/manager is not appointed.<sup>39</sup>

45. These factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.<sup>40</sup>

46. Although the appointment of a receiver has traditionally been considered an extraordinary remedy, it is now well established that “its extraordinary nature is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements.”<sup>41</sup> In such circumstances, the burden on the applicant secured creditor is relaxed as the applicant is simply seeking to enforce a term of an agreement assented to by the parties.<sup>42</sup> The legal test in such cases “requires the court to determine whether it is in the interests of all concerned to have the receiver appointed.”<sup>43</sup> Furthermore, this Court has recognized that there is a clear distinction between cases where the borrower is in default and those where no default has occurred, and has held that burden is lowered in cases where the loan and security documents are in default.<sup>44</sup>

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<sup>38</sup> *iSpan Systems LP*, [2023 ONSC 6212](#) at [para 32](#) [*iSpan*]. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, [2022 ONSC 6186](#) at [para 25](#). See also *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#) at [para 25](#), where the Supreme Court of British Columbia, citing *Bennett on Receivership*, 2nd ed., listed the above factors.

<sup>39</sup> *Freure Village*, *supra* at [para 10](#); *Bank of Montreal v. Carnival National Leasing Ltd.*, [2011 ONSC 1007](#) at [paras 28-29](#) [*Carnival*].

<sup>40</sup> *iSpan*, *supra* at [para 33](#); *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, [2022 BCSC 136](#) at [para 54](#).

<sup>41</sup> *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) [*BCIMC*] at [para 43](#).

<sup>42</sup> *Bank of Montreal v. Sherco Properties Inc.*, [2013 ONSC 7023 \(CanLII\)](#) at [para 42](#); *iSpan*, *supra* at [para 31](#). *Elleway*, *supra* at [para 27](#). *Freure Village*, *supra* at [para 12](#); and

<sup>43</sup> *Elleway*, *ibid* at [para 28](#). *Freure Village*, *ibid* at [paras 12-15](#).

<sup>44</sup> *Freure Village*, *ibid* at [paras 12-15](#). *Carnival*, *supra* at [paras 25-32](#). *Royal Bank v Brodak Construction Services Inc.*, [2002 CanLII 49590 \(ONSC\)](#) at [para 11](#).

47. Having regard to the foregoing considerations, the Applicant submits that the appointment of the proposed Receiver is just and convenient in the circumstances for the following reasons, among other things:

- (a) as of April 2025, the Debtor is in default of its obligations under the Senior Credit Agreement, the Subordinate Demand Note and the Security, and such default is continuing;
- (b) Pivot LP has lost all confidence and trust in the management of the Debtor to continue to satisfy its obligations to Pivot LP as a result of the material adverse changes noted above;
- (c) pursuant to the terms of the Pivot Forbearance Agreement, a Forbearance Termination Event (as defined therein) has occurred, and the Debtor consented to the appointment of a receiver upon the termination of the forbearance;
- (d) the Security contains a contractual right to the appointment of a court-appointed receiver;
- (e) the continuation of servicing functions and the preservation of the Debtor's mortgage servicing platform are critical to maintaining the value of the underlying assets, and such functions are best maintained under the supervision of a court-appointed receiver;
- (f) absent the appointment of a receiver, there is a material risk that the Securitization Funders would not be willing to pay servicing fees on substantially similar terms

as those contained in the Forbearance Agreements, which would significantly impair enterprise value;

- (g) a court-supervised receivership will provide a centralized, orderly and transparent process to efficiently manage the Debtor's assets, coordinate stakeholder interests, and maximize recoveries;
- (h) the Proposed Arrangement was ultimately not completed. As a result, the Debtor remains highly leveraged, has ceased making payments to unsecured creditors and continues to operate under significant financial distress and reliance on lender forbearance. In these circumstances, a receivership is required to preserve and realize upon the Debtor's assets for the benefit of all stakeholders;
- (i) the ongoing Ad Hoc Group Application will: (i) negatively impact the operations of the Debtor, (ii) further de-stabilize the business of the Debtor and compound the Debtor's current liquidity crisis, and (iii) erode value, to the detriment of Pivot LP as the senior lender;
- (j) the proposed receivership proceedings will assist in stabilizing operations for the Debtor, by providing an effective forum to manage creditor and stakeholder claims and enquiries;
- (k) as of the date hereof the Applicant is not aware of any opposition from any stakeholders relating to the granting of the proposed Receivership Order; and
- (l) the Debtor's assets consist primarily of distressed mortgage loans that are subject to on-going power of sale proceedings, the outcome and timing of which are

uncertain and may extend over a period of up to 12 to 18 months, and which require active management, oversight and coordination in order to preserve and maximize recoveries.<sup>45</sup>

**C. The Terms of the Proposed Receivership Order are Appropriate**

48. The proposed Receivership Order, is tailored to the scope of Pivot LP's security, and is substantially similar to the terms of the Commercial List model order and is appropriate in the circumstances.<sup>46</sup>

49. The proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the complexity of these proceedings.<sup>47</sup>

**PART V – ORDER REQUESTED**

50. Pivot LP respectfully requests that this Honourable Court grant an order substantially in the form of the draft Receivership Order located at Tab 3 of its application record and such further and other relief as counsel may advise and this Honourable Court may deem just.

April 9, 2026



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**DLA PIPER (CANADA) LLP**  
*Counsel to the Applicant, Pivot Financial I Limited Partnership*

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<sup>45</sup> Flaro Affidavit, *ibid* at paras 88-90, Application Record at Tab 2.

<sup>46</sup> Flaro Affidavit, *ibid* at paras 88-90, Application Record at Tab 2. Blackline of the proposed Receivership Order against the Model Receivership Order (Ontario), Application Record at Tab 3.

<sup>47</sup> Flaro Affidavit, *ibid* at para 90, Application Record at Tab 2.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Bank of Montreal v. Carnival National Leasing Limited*, [2011 ONSC 1007](#)
2. *Bank of Montreal v. Sherco Properties Inc.*, [2013 ONSC 7023](#)
3. *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#)
4. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#)
5. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, [2022 ONSC 6186](#)
6. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, [2013 ONSC 6866](#)
7. *iSpan Systems LP*, [2023 ONSC 6212](#)
8. *Logpin Investments Limited v. Sanford Sussman*, [2025 ONSC 3369](#)
9. *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#)
10. *Meridian v Okje Cho & Family Enterprise Ltd.*, [2021 ONSC 3755](#)
11. *Pandion Mine Finance Fund LP v Otso Gold Corp.*, [2022 BCSC 136](#)
12. *Royal Bank v. Brodak Construction Services Inc.*, [2002 CanLII 49590 \(ON SC\)](#)

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

April 9, 2026



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid black horizontal line.

**SCHEDULE “B”  
STATUTES AND REGULATIONS**

**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.

**Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of *receiver***

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

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

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

**Definition of *receiver* — subsection 248(2)**

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

**Trustee to be appointed**

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

**Place of filing**

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

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of disbursements**

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

**Advance notice**

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

### **Period of notice**

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

### **No advance consent**

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

### **Exception**

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

### **Idem**

(4) This section does not apply where there is a receiver in respect of the insolvent person.

## **[Canada Business Corporations Act \(R.S.C., 1985, c. C-44\)](#)**

### **Definition of arrangement**

192 (1) In this section, arrangement includes

(a) an amendment to the articles of a corporation;

(b) an amalgamation of two or more corporations;

(c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act;

- (d) a division of the business carried on by a corporation;
- (e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;
- (f) an exchange of securities of a corporation for property, money or other securities of the corporation or property, money or securities of another body corporate;
- (f.1) a going-private transaction or a squeeze-out transaction in relation to a corporation;
- (g) a liquidation and dissolution of a corporation; and
- (h) any combination of the foregoing.

### **Where corporation insolvent**

- (2) For the purposes of this section, a corporation is insolvent
  - (a) where it is unable to pay its liabilities as they become due; or
  - (b) where the realizable value of the assets of the corporation are less than the aggregate of its liabilities and stated capital of all classes.

### **Application to court for approval of arrangement**

- (3) Where it is not practicable for a corporation that is not insolvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the corporation may apply to a court for an order approving an arrangement proposed by the corporation.

### **Powers of court**

- (4) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,
  - (a) an order determining the notice to be given to any interested person or dispensing with notice to any person other than the Director;
  - (b) an order appointing counsel, at the expense of the corporation, to represent the interests of the shareholders;
  - (c) an order requiring a corporation to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in such manner as the court directs;
  - (d) an order permitting a shareholder to dissent under section 190; and

(e) an order approving an arrangement as proposed by the corporation or as amended in any manner the court may direct.

### **Notice to Director**

(5) An applicant for any interim or final order under this section shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

### **Articles of arrangement**

(6) After an order referred to in paragraph (4)(e) has been made, articles of arrangement in the form that the Director fixes shall be sent to the Director together with the documents required by sections 19 and 113, if applicable.

### **Certificate of arrangement**

(7) On receipt of articles of arrangement, the Director shall issue a certificate of arrangement in accordance with section 262.

### **Effect of certificate**

(8) An arrangement becomes effective on the date shown in the certificate of arrangement.

## **[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.

Court File No:

**PIVOT FINANCIAL I LIMITED PARTNERSHIP**  
Applicant

- and -

**BRIGHTPATH CAPITAL CORPORATION**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT,**  
**PIVOT FINANCIAL I LIMITED PARTNERSHIP**

**DLA PIPER (CANADA) LLP**

Suite 5100, Bay Adelaide – West Tower  
333 Bay Street  
Toronto, ON M5H 2R2

**Edmond Lamek** (LSO #33338U)

Tel: 416-365-3444

[edmond.lamек@dlapiper.com](mailto:edmond.lamек@dlapiper.com)

*Counsel to the Applicant, Pivot Financial I Limited  
Partnership*