

COURT FILE NUMBER 2401-00363
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ATB FINANCIAL
DEFENDANTS STARKE CAPITAL CORP. AND 1637102 ALBERTA LTD.



DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Pantelis Kyriakakis / Nathan Stewart
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Email: pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

NOTICE TO RESPONDENT:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard, as shown below:

Date:	January 18, 2024
Time:	10:00 a.m.
Where:	Calgary Courts Centre (Virtual Courtroom via WebEx – see Schedule “A” hereto)
Before Whom:	The Honourable Justice Neufeld

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought: ATB Financial (the “**Lender**”) applies for relief in respect of Starke Capital Corp. (the “**Borrower**”) and 1637102 Alberta Ltd. (the “**Guarantor**”, the Guarantor and the Borrower are collectively referred to as, the “**Debtors**”), substantially in the form of order attached as Schedule “**B**” (the “**Receivership Order**”) hereto:

1. If necessary, abridging the time required for service of this application (the “**Application**”) and supporting materials to the date service was effected, declaring that this Application is properly returnable on January 18, 2024, that service of the Application and supporting materials,

as described in the corresponding affidavit of service, is good and sufficient, and that no other persons are entitled to service of the Application or any orders arising therefrom.

2. Appointing BDO Canada Limited (“**BDO**”) as the receiver and manager (when referred to in such capacity, the “**Receiver**”) of all of the Debtors’ Property (as defined below), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 13(2) of the *Judicature Act*, R.S.A. 2000 (the “**Judicature Act**”).

3. Such further and other relief as counsel for the Lender may advise.

Grounds for Making this Application:

4. The facts in support of this Application are more fully set out in the Affidavit of Brian Spilchen, sworn on January 9, 2024 (the “**Spilchen Affidavit**”).

5. Starke Capital Corp., Starke Franklin Industrial Ltd., and Starke Plaza 14 Ltd., each a corporation incorporated pursuant to the laws of the Province of Alberta, amalgamated, on or around April 9, 2018, to form Starke Capital Corp.; the Borrower.

6. The Borrower is a body corporate, incorporated pursuant to the laws of the Province of Alberta, and has offices and carries on business in Calgary, Alberta.

7. The Borrower has been struck from the Corporate Registry.

8. The Borrower is a Calgary based company focused on the acquisition, ownership, and management of the property municipally described as 811 - 14th Street NW, Calgary, Alberta and legally described as CONDOMINIUM PLAN 8111330; UNIT 28; AND 4690 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY; EXCEPTING THEREOUT ALL MINES AND MINERALS (the “**Lands**”).

9. The Lands consist of the commercial portion of a mixed-use, residential and commercial condominium development.

10. The Guarantor is a body corporate, incorporated pursuant to the laws of the Province of Alberta, and has offices and carries on business in Calgary, Alberta.

11. The Guarantor is the sole voting shareholder of the Borrower and is currently the registered owner of the Lands.

Overview of Commitment Letter

12. To fund its operations, the Borrower entered into an Amended and Restated Commitment Letter, dated May 7, 2019 (the “**Original Commitment Letter**”), between the Lender, as lender, the Borrower, as borrower, and the Guarantor, as guarantor, as subsequently amended pursuant to the Notice of Minor Change Agreement, dated November 15, 2021 (the “**Notice of Minor Change Agreement**” and collectively with the Original Commitment Letter, as amended, the “**Commitment Letter**”).

13. Pursuant to the Commitment Letter, the Lender made available, to the Borrower: (i) a non-revolving reducing loan facility, in the maximum amount of \$7,733,086.94 (“**Facility #1**”); and, (ii) a non-revolving reducing credit facility, in the maximum amount of \$470,771.76 (“**Facility #2**”, Facility #2 and Facility #1 are collectively referred to as, the “**Credit Facilities**”).

14. The Credit Facilities are due and payable upon the earlier of: (i) the applicable maturity date, being January 31, 2022 in each case; or (ii) the Lender’s demand.

15. As of January 9, 2024, the Debtors were indebted to the Lender in the amount of \$8,564,285.29, plus any and all accruing interest, fees (including, without limitation, solicitor’s fees as between a solicitor and their own client, on a full indemnity basis), costs, and expenses, pursuant to and in accordance with the terms of the various and relevant agreements between the Lender and the Debtors (collectively, the “**Indebtedness**”).

Guarantee

16. The Indebtedness and all other debts, liabilities, and obligations due and owing by the Borrower, to the Lender, are guaranteed pursuant to the Continuing Guarantee (Including Postponement and Assignment of Claims), dated July 2019 (the “**Guarantee**”), granted by the Guarantor, to and in favour of the Lender.

17. Pursuant to the Guarantee, the Guarantor unconditionally guaranteed payment to the Lender of all existing and future debts and liabilities, direct or indirect or by way of guarantee or otherwise, whether incurred alone or with another or others, voluntarily or involuntarily, whether due or not due, and whether absolute, inchoate, contingent, liquidated, or unliquidated; plus interest accrued or to accrue on all such debts and liabilities at the same rate or rates payable by the Borrower, both before and after default, maturity and judgment, whether such judgment be

obtained against the Borrower and the Guarantor or any of them, plus any other sums payable under the Guarantee.

Security

18. As continuing security for the Borrower's obligations to the Lender, the Debtors executed the following security agreements:

- (a) General Security Agreement, dated May 3, 2016 (the "**Borrower GSA**"), granted by the Borrower, to and in favour of the Lender;
- (b) Collateral Mortgage, dated May 3, 2016 (the "**Mortgage**"), granted by the Borrower, to and in favour of the Lender, in the principal amount of \$8,800,000;
- (c) General Assignment of Rents and Leases, dated May 3, 2016 (the "**GARL**"), granted by the Borrower, to and in favour of the Lender; and,
- (d) General Security Agreement, dated July 2019 (the "**Guarantor GSA**", the Guarantor GSA and the Borrower GSA are collectively referred to as, the "**GSAs**"), granted by the Guarantor, to and in favour of the Lender,

(collectively, the "**Security**").

GSAs

19. Pursuant to the GSAs, as general continuing collateral security for the payment and performance of all debts, liabilities, and obligations of the applicable Obligor, to the Lender, howsoever arising, both present and future, absolute and contingent, direct and indirect, matured or not, and whether the Debtors are bound alone or jointly and severally with others, respectively:

- (a) the Borrower assigned and granted, to the Lender, under the Borrower GSA, a mortgage, pledge, charge, and security interest (which, in the case of any real property and other GSA Collateral (as defined below) not subject to the *Personal Property Security Act* (Alberta) (the "**PPSA**"), shall be a mortgage as and by way of a floating charge), to and in favour of the Lender, in all of the Borrower's present and after-acquired personal property (including in all such property, assets and undertaking owned or leased by or licensed to the Borrower and in which the Borrower at any time has an interest or to which the Borrower is or at any time may

become entitled) and in all proceeds and renewals thereof, accessions thereto and substitutions therefor; and,

- (b) the Guarantor assigned and granted, to the Lender, under the Guarantor GSA, a security interest and pledge in all of the Guarantor's present and after-acquired personal property, and in all proceeds and renewals thereof, accessions thereto and substitutions therefor,

(collectively, the "**GSA Collateral**").

20. The GSAs provide that the Lender, upon the occurrence of an event of default, may apply to a court for the appointment of, a receiver, manager, or a receiver and manager with respect to the Collateral.

Mortgage

21. Pursuant to the Mortgage, as general and continuing collateral security for the payment by the Borrower of all Obligations (as defined below), up to (a) the principal amount of eight million, eight hundred thousand (\$8,800,000.00) dollars, plus (b) interest thereon, before and after maturity, default and judgment, computed at a floating rate equal to five percent (5%) per annum above the prime lending rate established by the Lender from time to time for commercial loans made by the Lender in Canada in Canadian dollars, calculated daily and payable monthly, with interest on overdue interest at the same rate, and (c) all further monies which may become payable pursuant to the terms of the Mortgage, the Borrower, as mortgagor, mortgaged, encumbered, and charged the Lands along with various interests, rights, and remedies associated thereto (the "**Mortgage Collateral**"), to and in favour of the Lender, as mortgagee.

22. The Mortgage provides that, in the event of default occurring, the security granted under the Mortgage will immediately become enforceable and may be enforced without the requirement of any further notice of default or nonpayment from the Lender to the Borrower.

GARL

23. Pursuant to the GARL, as continuing security for the payment and performance of all debts, liabilities and obligations of the Borrower to the Lender, howsoever arising (present and future, absolute and contingent, direct and indirect), the Borrower assigned to the Lender all: (a) leases, licenses, tenancy agreements, or rights of use or occupation of every kind in respect of

the Lands or any part thereof (collectively, the “**Leases**”); (b) all rents and other payments then or thereafter due under the Leases (collectively, the “**Rents**”); (c) the benefits of all guarantees of the Leases; and, (d) the benefit of all covenants by all tenants, lessees, users, occupiers, and licensees of the Lands, all with full power and authority to demand, collect, sue for, distrain, recovery, receive, and give receipts for the Rents, to enforce payment thereof and to enforce performance of all the Leases in the name of and as agent for the Borrower (collectively, the “**GARL Collateral**”, the GARL Collateral, the Mortgage Collateral, and the GSA Collateral are collectively referred to as, the “**Property**”).

24. The GARL is enforceable upon default in payment of the Indebtedness, or any part thereof, or in the performance of any term contained in any agreement between the Lender and the Borrower in respect of the Indebtedness.

Registration of Mortgages and Security

25. The Security was perfected by registration.

Defaults and Demand

26. The Borrower committed various events of default under the Commitment Letter and the Mortgages, including, among others:

- (a) failing to repay the Credit Facilities upon their maturity;
- (b) failing to make any payments under the Commitment Letter since March 2023; and,
- (c) failing to satisfy amounts owing to the condominium corporation associated with certain properties subject to the Mortgage, which arrears amounted to \$141,100.03, as at July 5, 2023, which has resulted in the filing of the Condominium Corporation Statement of Claim (as defined below),

(collectively, the “**Initial Defaults**”).

27. The Initial Defaults constitute defaults or events of default under the Commitment Letter and the Security.

28. The Lender, through its counsel, sent correspondence dated July 24, 2023 (the “**Demand & Reservation of Rights Letter**”), to the Debtors: (i) informing the Debtors that the Initial Defaults constituted events of default, pursuant to the terms of the Commitment Letter and the Security; (ii) requesting that the Debtors provide certain information to the Lender, on or before August 4, 2023; and, (iii) reserving all of the Lender’s rights and remedies as and against the Debtors.

29. The Debtors did not respond to the Demand & Reservation of Rights Letter.

30. Despite the issuance of the Demand & Reservation of Rights Letter, the Debtors failed to address or cure certain of the Initial Defaults, within the applicable cure periods (collectively, the “**Subsequent Default**”, the Subsequent Default and the Initial Defaults are collectively referred to as, the “**Defaults**”).

31. As a result of the Defaults, the Lender, through its counsel, delivered a letter (the “**Demand Letter**”) dated August 9, 2023, to the Debtors, pursuant to which, among other things, the Lender advised the Debtors of the Defaults and demanded that the Debtors immediately repay to the Lender all amounts outstanding under and pursuant to the Commitment Letter, the Mortgage, and the Security. The Demand Letter also enclosed two (2) Notice of Intention to Enforce Security (collectively, the “**244 Notices**”) under and pursuant to subsection 244(1) of the BIA, with respect to each of the Debtors.

32. The Debtors have failed, neglected, or refused to repay the Indebtedness, as required by the Commitment Letter and the terms and conditions of the Guarantee and the Security.

33. In addition to the Defaults:

- (a) on or around May 9, 2018, without the knowledge or consent of the Lender, and subsequent to the registration of the Mortgage and the GARL against the Lands, the Borrower transferred title to the Lands into the name of the Guarantor, which constitutes a further default under the terms of the Mortgage;
- (b) on or around September 13, 2023, a Garnishee Summons, with respect to the Guarantor, was served by CDN Global Advisors Ltd. upon at least one tenant of the Lands, which constitutes a further default under the terms of the Mortgage; and,

- (c) on November 14, 2023, Condominium Corporation No. 8111330, being the condominium corporation with respect to the Lands, filed a Statement of Claim against the Guarantor, in the Court of King's Bench of Alberta under Court File Number 2301-15033 (the "**Condominium Corporation Statement of Claim**"), seeking, among other things, to enforce certain charges against the Lands, which constitutes a further default under the terms of the Mortgage.

Necessity of the Appointment of a Receiver

34. In late December 2023, the Debtors retained a listing agent to lease and sell the Lands.

35. The Lands remain partially unoccupied and the Debtors have made no progress in obtaining new leases with respect to portions of the Lands, following the issuance of the Default & Reservation of Rights Letter.

36. The Lender has serious concerns regarding the Debtors' ability to direct a sales or leasing process given that the Debtors appear to have no management and have not yet addressed or provided any plan to address the current leasing deficiencies associated with the Lands and the current tenants of same. At least one material lease has expired without extension or replacement, although it is the Lender's understanding that the tenant under the expired lease remains in occupation of the premises and has continued to pay rent at the previous rate.

37. The Lender has repeatedly requested that the Debtors obtain a lease renewal from this tenant, but no progress has been made in this regard.

38. It is just, convenient, and appropriate for a Receiver to be appointed over the Property, for the following reasons:

- (a) the Security provides that, upon the Debtors' default, the Lender may apply to the Court for the appointment of a Receiver over the Property;
- (b) the Debtors have committed numerous, ongoing defaults under the Commitment Letter and the Security;
- (c) the Debtors were advised of the Initial Defaults in July 2023, and of the Subsequent Default in August 2023, but have failed to cure such defaults, despite the issuance of a demand for repayment in August 2023. Furthermore, the Debtors have not

responded to the Lender's concerns and have failed to engage with the Lender's efforts to find a viable means of maximizing value and recoveries from the realization of the Collateral and repaying the Indebtedness. No viable proposal has been put forward by the Debtors;

- (d) the Debtors have no access to any funds or availability under the Credit Facilities or the Commitment Letter, and the Lender is not prepared to extend any further credit, other than any provided under and secured by a Receiver's borrowings charge. The Debtors do not have sufficient available funds to repay the Indebtedness or their other obligations. In light of the filing of the Condominium Corporation Statement of Claim, there is a serious risk of the loss or deterioration of the Lender's collateral;
- (e) the Debtors appear to be unable to manage their own affairs and have no viable means of continuing operations;
- (f) the appointment of a Receiver is likely the best means of addressing the current leasing and management shortcomings, to stabilize the Property, before going to market, to maximize value for all stakeholders, as a Receiver will: (i) have authority to enter into new leases with respect to the Lands; (ii) stabilize the Debtors' operations and prevent further erosion of the collateral; and, (iii) be capable of marketing the Lands and other Property in a collective, court-supervised process for the benefit of all stakeholders; and,
- (g) the Lender has serious and valid concerns regarding the protection and preservation of the Property outside of a receivership.

39. BDO is a licensed insolvency trustee, and has consented to acting as the Receiver of the Debtors if so appointed by this Honourable Court.

40. Such further grounds as counsel for the Lender may advise.

Material or evidence to be relied on:

41. The Affidavit of Brian Spilchen, sworn on January 9, 2024, to be filed.

42. Consent to Act as Receiver, dated January 9, 2024, to be filed.

43. Such further and other material as counsel for the Lender may advise and this Honourable Court may permit.

Applicable rules:

44. Rules 1.3, 6.3, 6.4, 6.9, 11.27, and 13.5 of the *Alberta Rules of Court*.

45. Such further and other rules as counsel for the Lender may advise and this Honourable Court may permit.

Applicable acts and regulations:

46. Section 243 of the BIA.

47. Section 13(2) of the Judicature Act.

48. Such further and other acts and regulations as counsel for the Lender may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

49. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

50. The Lenders propose that the Application be heard in person or via WebEx with one, some, or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A" WEBEX DETAILS

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE "B"
RECEIVERSHIP ORDER

See attached.

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Clerk's Stamp

DATE ON WHICH ORDER WAS PRONOUNCED: January 18, 2024
LOCATION OF HEARING OR TRIAL: Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER: Justice Neufeld

UPON the application (the "**Application**") of ATB Financial (the "**Lender**"), in respect of Starke Capital Corp. and 1637102 Alberta Ltd. (collectively, the "**Debtors**"); **AND UPON** having read the Application, the Affidavit of Brian Spilchen, sworn on January 9, 2024 (the "**Spilchen Affidavit**"), and the Affidavit of Service of Katie Hynne, sworn on January ____, 2024 (the "**Service Affidavit**"), all filed; **AND UPON** reading the consent of BDO Canada Limited to act as receiver and receiver and manager (the "**Receiver**") of all of the assets, properties, and undertakings of the Debtors, filed; **AND UPON** hearing counsel for the Lender, counsel for the proposed Receiver, and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application for this order (the "**Order**") and the Spilchen Affidavit is hereby abridged, if necessary, the Application is property returnable today, service of the Application and the Spilchen Affidavit on the service list (the "**Service List**") attached as Exhibit "A" to the Service Affidavit, in the manner described in the Service Affidavit, is

good and sufficient, and no other persons other than those listed on the Service List, are entitled to service of the Application and the Spilchen Affidavit.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), and section 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2, BDO Canada Limited is hereby appointed Receiver, without security, of all of the Debtors’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**Property**”).

RECEIVER’S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over all or some of the Property or certain portions thereof, and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver’s ability to abandon, dispose of, or otherwise release any interest in any of the Debtors’ real or personal property, or any right in any immovable;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any parts of the business, or cease to perform any contracts of the Debtors;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$200,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and,
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to assign the Debtors into bankruptcy, in accordance with the provisions of the BIA, where the Receiver is of the opinion that the making of such assignment is proper and in the best interests of the estate; and,
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access

to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended, pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by

statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against, concerning, or in respect of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with, or continued except with the written consent of the Receiver or leave of this Court, provided, however, that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this Order shall:
 - (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or,
 - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking any action against the Debtors where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps or actions shall be taken by any such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Receiver, or with leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

12. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors,

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors, or exercising any other remedy provided under such agreements or arrangements. The Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors, by and through the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date

of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees’ rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors’ behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 (“**WEPPA**”).

15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATIONS ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

- (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

- 17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

- 18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, incurred prior to and after the date of this Order, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4), 81.6(2), and 88 of the BIA.
- 19. The Receiver and its legal counsel shall pass their accounts from time to time.
- 20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver is at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4), 81.6(2), and 88 of the BIA.
22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. The Receiver or any other interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by

the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. The Receiver shall establish and maintain a website in respect of these proceedings at _____ (the "**Receiver's Website**") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available; and
- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

35. Service of this Order shall be deemed good and sufficient by:

- (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and,
- (b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

**SCHEDULE "A" TO THE RECEIVERSHIP ORDER
RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT: \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Starke Capital Corp. and 1637102 Alberta Ltd. appointed by Order of the Court of King's Bench of Alberta (the "**Court**") dated the 18th day of January, 2024 (the "**Order**") made in action number 2401-00363, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of **\$200,000** that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**] [**monthly not in advance on the _____ day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of ATB Financial from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Suite 600, 585-8th Ave SW, Calgary, AB T2P1G1.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

**BDO Canada Limited solely in its capacity
as Receiver of the Property (as defined in
the Order), and not in its personal capacity**

Per: _____
Name:
Title: