

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) MONDAY, THE 13TH DAY
)
JUSTICE W.D. BLACK) OF JANUARY, 2025

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by TDB Restructuring Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers (the “**Unsold Units**”) legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 constituting property of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between Nicolas Vecchio Milovich and Hatice Akgul, and the Receiver dated December 9, 2024, as amended, a copy of which is appended to the Sixth Report of the Receiver dated January 3, 2025 (the “**Sixth Report**”) as Appendix “B”, and vesting in the Purchasers (as defined herein) the Receiver’s right, title and interest in and to the property described in the Sale Agreement (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Sixth Report and on hearing the submissions of counsel for the Receiver and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service of Natalie Longmore sworn and filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the Sixth Report.

APPROVAL AND VESTING

3. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor and non-material amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

4. **THIS COURT ORDERS** that, upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Receiver's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in VECCHIO MILOVICH, Nicolas and AKGUL, Hatice (the "**Purchasers**") as joint tenants free and clear of and from any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated February 6, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant

to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the encumbrances listed on **Schedule “D”** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that, upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchasers as the owners of the subject property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple as joint tenants, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

6. **THIS COURT ORDERS** that the Receiver pay to Toronto Standard Condominium Corporation No. 2983 (the “**Condo Corp**”) from the sale proceeds of the Transaction any amounts owing in respect of any notices and other instruments registered by the Condo Corp against title to the Unsold Units.

7. **THIS COURT ORDERS AND DIRECTS** that the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) shall delete and expunge Instrument No. AT6510972, being an Application to Register Court Order registered on February 8, 2024, in favour of RSM Canada Limited (now known as TDB Restructuring Limited), and Instrument No. AT6562063, being an Application to Register Court Order registered on April 30, 2024, in favour of TDB Restructuring Limited, from title to the Real Property identified on **Schedule “B”** hereto.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, as soon as practicable after delivery thereof.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;


the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS AND DIRECTS** that the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) shall delete and expunge the within approval and vesting order from title to the Real Property identified on **Schedule "B"** hereto upon the registration of the transfer of the Real Property from the Purchasers to a third party.

GENERAL

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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 or to assist the Receiver and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry, filing, or a specific form of electronic signature stamp.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "M. D. Rauh".

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-24-00713783-00CL

**ONTARIO
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*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

**PEOPLES TRUST COMPANY and
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Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to the Order of Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 6, 2024 (the “**Appointment Order**”), RSM Canada Limited (now known as TDB Restructuring Limited) was appointed as the receiver (the “**Receiver**”) of the Unsold Units, including all proceeds thereof (the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) located at 25 Neighbourhood Lane, Toronto, Ontario.

B. Pursuant to an Approval and Vesting Order of the Court dated January 13, 2025, the Court approved the agreement of purchase and sale made as of December 9, 2024, as amended, between the Receiver and Nicolas Vecchio Milovich and Hatice Akgul (the “**Purchasers**”) (the “**Sale Agreement**”) and provided for the vesting in the Purchasers of the Receiver’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order of the Court dated January 13, 2025, and the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid, and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**TDB Restructuring Limited, solely in its
capacity as Receiver of the Property, and not in
its personal capacity**

Per:

Name:

Title:

Schedule “B” – Purchased Assets

UNIT 202

PIN 76983 – 0011 (LT)

Description: UNIT 2, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0164 (LT)

Description: UNIT 29, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0193 (LT)

Description: UNIT 58, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

Municipally known as Unit 202, 25 Neighbourhood Lane, Toronto, and all other property governed by the Sale Agreement and all amendments thereto, together with the chattels set out in the Sale Agreement.

Schedule “C” – Claims to be Deleted and Expunged from Title to the Real Property

	REG. NUM.	Date	Instrument Type	Amount	Parties To	Cert / CHKD	PINS
1.	AT5030525	2018/12/12	Charge	\$18,750,000	Trisura Guarantee Insurance Co.	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
2.	AT5175582 Remarks: AT5030525	2019/07/02	Notice		Trisura Guarantee Insurance Co.	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
3.	AT6405972	2023/08/24	Charge	\$12,700,000	Peoples Trust Company	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
4.	AT6405973 Remarks: AT6405972	2023/08/24	No Assgn Rent Gen		Peoples Trust Company	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
5.	AT6406080	2023/08/24	Postponement		Peoples Trust Company	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
6.	AT6407058	2023/08/25	Construction Lien	\$384,182		C	76983-0011 (LT)
7.	AT6407909	2023/08/28	Construction Lien	\$1,845,369		C	76983-0011 (LT)
8.	AT6436267	2023/10/06	Construction Lien	\$213,401		C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
9.	AT6439785 Remarks: AT6407058	2023/10/12	Certificate			C	76983-0011 (LT)
10.	AT6445432 Remarks: AT6407909	2023/10/23	Certificate		Vandyk- Backyard Queensview Limited Peoples Trust Company Trisura Guarantee	C	76983-0011 (LT)

					Insurance Company		
11.	AT6450100	2023/10/30	Construction Lien	\$1,142,744		C	76983-0011 (LT)
12.	AT6452324	2023/11/01	Construction Lien	\$702,998		C	76983-0011 (LT)
13.	AT6457807	2023/11/10	Construction Lien	\$16,952		C	76983-0011 (LT)
14.	AT6458231	2023/11/10	Construction Lien	\$2,282,408		C	76983-0011 (LT) 76983-0164 (LT)
15.	AT6458352	2023/11/10	Construction Lien	\$658,839		C	76983-0011 (LT) 76983-0164 (LT)
16.	AT6459779	2023/11/15	Construction Lien	\$127,350		C	76983-0011 (LT)
17.	AT6460827	2023/11/15	Construction Lien	\$122,337		C	76983-0011 (LT)
18.	AT6460839	2023/11/15	Certificate			C	76983-0011 (LT)
	Remarks: AT6457807						
19.	AT6469954	2023/11/30	Certificate			C	76983-0011 (LT) 76983-0164 (LT)
	Remarks: AT6458231		Certificate of Action				
20.	AT6469955	2023/11/30	Certificate			C	76983-0011 (LT) 76983-0164 (LT)
	Remarks: AT6458352		Certificate of Action				
21.	AT6471012	2023/12/01	Condo Lien /98	\$87		C	76983-0193 (LT)
22.	AT6470604	2023/12/01	Condo Lien /98	\$417		C	76983-0164 (LT)
23.	AT6472516	2023/12/04	Construction Lien	\$462,217		C	76983-0011 (LT)
24.	AT6480459	2023/12/14	Certificate			C	76983-0011 (LT)
	Remarks: AT6459779						
25.	AT6481040	2023/12/15	Certificate			C	76983-0011 (LT)
	Remarks: AT6452324						
26.	AT6481578	2023/12/15	Construction Lien	\$323,750		C	76983-0011 (LT)
27.	AT6495103	2024/01/12	Certificate			C	76983-0011 (LT)

	Remarks: AT6481578						
28.	AT6496982 Remarks: AT6450100	2024/01/16	Certificate			C	76983-0011 (LT)
29.	AT6508018	2024/02/02	Certificate			C	76983-0011 (LT)
30.	AT6510972	2024/02/08	Court Order		RSM Canada Limited	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)
31.	AT6513372 Remarks: AT6460827	2024/02/13	Certificate			C	76983-0011 (LT)
32.	AT6562063	2024/04/30	Court Order		TDB Restructuring Limited	C	76983-0011 (LT) 76983-0164 (LT) 76983-0193 (LT)

33.	Writ of Execution#	Effective Date	Sheriff of	Judgement Costs
	24-0000442	2024/01/24	Toronto	\$499,709.91 @ 7% interest starting 2024/01/19 \$4,876.56 @ 7% interest starting 2021/01/19

**Schedule “D” – Permitted Encumbrances Related to the Real Property
(unaffected by the Vesting Order)**

GENERAL ENCUMBRANCES

1. Encumbrances, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including charges, levies or imposts for sewers, electricity, power, gas, water and other services and utilities) not yet due and owing or, if due and owing, that are adjusted for pursuant to this Agreement, or the validity of which is being contested in good faith, and encumbrances or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor or the Debtors.
2. Inchoate or statutory encumbrances in respect of construction, renovations or current operations, in respect of which the Vendor or the Debtors has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts and of the Construction Lien Act (Ontario) or the Construction Act, Ontario (collectively the “Acts”) and (i) for which no claim has been registered against the Property and of which no notice in writing has been given to the Vendor or the Debtors pursuant to the Acts or otherwise, or (ii) that relate to obligations not yet due.
3. Statutory liens and levies and other rights conferred upon, reserved to or vested in the Crown, the public or any municipality or governmental or other public authority by any statutory provision including rights of expropriation, access or user.
4. Subsisting reservations, limitations, provisos, conditions or exceptions contained in any grant of the Property or any portion thereof or interest therein from the Crown, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
5. Unregistered liens, charges, adverse claims, security interests or other encumbrances of any nature claimed or held by any Governmental Authority.
6. The right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of the Person, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof.
7. Restrictions, by-laws, regulations, ordinances and similar instruments affecting the use of land or the nature of any structures which may be erected on the Property, including zoning, land-use and building by-laws and ordinances.
8. Minor encroachments or illegal views by the Property over neighbouring land and/or permitted under agreements with neighbouring landowners and minor encroachments or illegal views over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.
9. Any minor title defects, irregularities, encroachments, easements, rights-of-way, rights to use, servitudes or similar interests revealed by any plan, technical description or survey or certificate of location of Property disclosed to or obtained by the Purchaser, or which would be revealed by an up-to-date survey or certificate of location of the Property.

10. Any registrations, notice or caveat in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any encumbrance of any nature whatsoever charging the interest of persons (other than the Seller) under any such lease (including subleases, amendments to leases or assignments of leases or subleases).
11. Agreements with any governmental authority or any public utility or private supplier of services or utilities including subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements, engineering agreements, grading agreements or landscaping agreements, provided either (i) such agreements have been complied with or (ii) if such agreements have not complied with, such non-compliance does not materially impair the use, operation or marketability of the Property.
12. Unregistered agreements, authorizations, consents, postponements, subordinations, licences, easements in favour of Hydro One or the local utility provided that they have been complied with or if not complied with, that any non-compliance does not materially impair the use, operation or marketability of the Property.
13. Easements, rights-of-way, servitudes, rights to use, restrictions, restrictive covenants, and similar rights in real property or immovables or any interest therein which do not materially impair the use, operation or marketability of the Property.
14. Minor easements, rights-of-way, licences or agreements for the supply of utilities or telephone services to the Property or adjacent land and/or for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, sidewalks, public ways, gas, steam or water mains, electric light and power, telephone and other telecommunication conduits, poles, wires and cables.
15. Minor title defects or irregularities that do not materially impair the use, operation or marketability of the Property.
16. Restrictive covenants, private deed restrictions, and other similar land use control agreements that are registered on title to the Property that do not materially impair the use, operation or marketability of the Property.
17. Statutory exceptions, reservations or qualifications to title including the liabilities, rights and interests described in Section 44(1) of the Land Titles Act (Ontario) and any rights reserved to or vested in any person by any statutory provision including rights of expropriation.
18. Any possessory title rights, easements, servitudes or interests that may have been obtained by abutting owners including the rights of any person entitled to any portion of the Property through length of adverse possession or prescription.
19. Any claim to the Property or any part thereof by way of aboriginal title.
20. With respect to instruments registered via Teraview Electronic Registration System ("TER System"), any error or omission in the receipt, transmission or recording of such instrument, or of any of the particulars contained in such instruments, subsequent to creation and electronic delivery of same to Teranet Land Information Services Inc. via the TER System.
21. On first registration, those additional matters constituting statutory exceptions or reservations pursuant to Subsection 44 (1) of the Land Titles Act (Ontario) (save and except Subsection 44 (1)

paragraph 11 (Planning Act), paragraph 14 (Dower Rights), Provincial succession duties and escheats or forfeiture to the Crown); the rights of any person who, but for the Land Titles Act (Ontario), would be entitled to the land or any part of it through length of possession, prescription, mis-description or boundaries settled by convention; and any lease to which Subsection 70 (2) of the Registry Act (Ontario) applies.

22. The permitted encumbrances set out in paragraph 10 of the OREA Form 500 to which this schedule is attached.
23. All instruments and Encumbrances on the PINS for the Property, other than those to be extinguished as set out in Scheule "C" hereof.

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

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VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Approval and Vesting Order)**

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