

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE *HAINES*) MONDAY, THE 11TH DAY
) OF MAY, 2020

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101
OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of 168 Old Kennedy Road, Markham, Ontario (the "**Property**") owned by 168 Old Kennedy Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Wu, Xiao Ling In Trust for a company to be incorporated made as of April 6, 2020 (as amended) and appended to the Report of the Receiver dated April 29, 2020 (the "**Report**"), and vesting in 2753129 Ontario Inc. (the "**Purchaser**") 168 Old Kennedy Inc.'s ("**168**") right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Report and on hearing the submissions of counsel for the Receiver and such other counsel as were present and made submissions, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Michelle Jackson sworn April 29, 2020, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor 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 Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of the Debtor'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 the Purchaser, free and clear of and from any and all 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 Penny dated December 6, 2019; (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 permitted encumbrances, easements and restrictive covenants listed on Schedule D) 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.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York (#65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **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.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

7. **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.

Hailey J.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-00631363-00CL

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the "**Court**") dated December 6, 2019, RSM Canada Limited was appointed as the receiver (the "**Receiver**") of 168 Old Kennedy Road, Markham, Ontario (the "**Property**") owned by 168 Old Kennedy Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated [DATE] (the "Vesting Order"), the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver and [NAME OF PURCHASER] (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver’s and the Debtor’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 Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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 Sale Agreement or the Vesting Order.

THE RECEIVER CERTIFIES the following:

8. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Date of Closing pursuant to the Sale Agreement;
9. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
10. The Transaction has been completed to the satisfaction of the Receiver; and
11. This Certificate was delivered by the Receiver at [TIME] on ►[DATE].

RSM Canada Limited, solely in its capacity as Court-appointed Receiver of 168 Old Kennedy Road, Markham, Ontario and not in its personal or corporate capacity and without personal or corporate liability

Per: _____
Name: ►
Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 168 Old Kennedy Inc.'s right, title and interest in and to the Property (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 168 Old Kennedy Road, Markham, Ontario

PIN 02953-0145 (LT): BLOCK 2, PLAN 65M4289 T/W EASE OVER PT E1/2 LT 2, CON 5, PTS 4, 6, 7 & 8, PL 65R30487 IN FAVOUR OF PT BLK 2, PL 65M4289 LYING WITHIN THE LIMITS OF PT 1, PL 65R30487, AS IN MA91760; T/W EASE OVER PT E1/2 LT 2, CON 5, PTS 2, 4, 7 & 8, PL 65R30487 IN FAVOUR OF PT BLK 2, PL 65M4289 LYING WITHIN LIMITS OF PT 5, PL 65R30487, AS IN MA110959; T/W EASE OVER PT E1/2 LT 2, ONC 5, PTS 2, 6, 7 & 8 IN FAVOUR OF PT BLK 1, PL 65M4289 LYING WITHIN LIMITS OF PT 3, PL 65R30487, AS IN R694330; S/T EASE AS IN YR1610522; S/T EASE IN GROSS AS IN YR1684881; SUBJECT TO AN EASEMENT IN GROSS AS IN YR1749103; SUBJECT TO AN EASEMENT IN GROSS AS IN YR1778673; SUBJECT TO AN EASEMENT AS IN YR1905638; SUBJECT TO AN EASEMENT OVER PTS 2, 4 & 6, 65R33280 IN FAVOUR OF BLK 3, PL 65M4289 AS IN YR1936318; CITY OF MARKHAM

Schedule C – Claims to be deleted and expunged from title to Real Property

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. YR2668099 is a Charge registered on May 15, 2017 in favour of Vector Financial Services Limited (“**Vector**”) in the amount of \$5,940,000.00.
2. Instrument No. YR2668100 is a General Assignment of Rents registered on May 15, 2017 in favour of Vector as collateral security to the Charge registered as Instrument No. YR2668099.
3. Instrument No. YR2668140 is a Charge registered on May 15, 2017 in favour of 2080552 Ontario Inc. in the amount of \$1,020,038.00.
4. Instrument No. YR2709457 is a Charge registered on July 28, 2017 in favour of 10114812 Canada Corporation in the amount of \$3,500,000.00.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:

- i. Instrument No. YR1610522 is a notice of an easement registered February 15, 2011 pursuant to which Cottonlane Estates Inc. (“**Cottonlane**”), as owner granted an easement in favour of Rogers Communications Inc. over the Property for the purpose of constructing, repairing, replacing, operating and maintaining its lines of cable television, telecommunications, electric power and service wires and facilities.
- ii. Instrument No. YR1684881 is a notice of an easement registered July 27, 2011 pursuant to which Cottonlane, as owner granted an easement in favour of Bell Canada over the Property for the purpose of constructing, repairing, replacing, renewing and making additions to telecommunications facilities.
- iii. Instrument No. 65M4289 is a plan of subdivision registered October 12, 2011.
- iv. Instrument No. 65R33280 is a reference plan registered October 13, 2011.
- v. Instrument No. YR1728686 is a notice of a subdivision agreement registered October 18, 2011 between The Corporation of the Town of Markham and Cottonlane which agreement deals with the development of the Property.
- vi. Instrument No. YR1728727 is a restrictive covenant registered by Cottonlane on October 18, 2011 which deals with restrictions in the development of the Property.
- vii. Instrument No. YR1749103 is a notice of an easement registered November 28, 2011 pursuant to which Cottonlane, as owner granted an easement in favour of Powerstream Inc. over the Property for the purpose of constructing, repairing, replacing, operating and maintaining the overhead/underground lines of electric power service wires.
- viii. Instrument No. YR1769961 is a notice of a site plan control agreement registered January 12, 2012 between The Corporation of the Town of Markham and Cottonlane which agreement deals with the development and use and operation of the Property.
- ix. Instrument No. YR1778672 is a notice of an adjacent development agreement registered February 1, 2012 between Cottonlane and Metrolinx which agreement includes restrictive covenants respecting the development of the Property.
- x. Instrument No. YR1778673 is a notice of an easement registered February 1, 2012 pursuant to which Cottonlane, as owner granted an easement in favour of Metrolinx over the Property for the purpose of discharging and emitting or releasing emissions.
- xi. Instrument No. YR1815013 is an amendment to a residential subdivision agreement registered April 30, 2012 which amends the terms of the subdivision agreement registered as Instrument No. YR1728686.
- xii. Instrument No. YR1905638 is a notice of an easement registered October 31, 2012 pursuant to which Cottonlane, as owner granted an easement in favour of Enbridge Gas Distribution Inc. over the Property for the purpose of surveying,

laying, constructing, installing, operating, using, inspecting, removing, renewing, replacing, altering, enlarging, reconstructing, repairing, expanding and maintaining pipelines.

- xiii. Instrument No. YR1936318 is a notice of an easement registered January 21, 2013 pursuant to which Cottonlane, as owner granted an easement in favour of The Corporation of the City of Markham over the Property for the purpose of ingress and egress and for regulating the lands.
- xiv. Instrument No. 65R34092 is a reference plan registered January 28, 2013.
- xv. Instrument No. YR2668044 is a Transfer from 2080552 Ontario Inc. to 168 Old Kennedy Inc. registered May 15, 2017.
- xvi. Instrument No. YR3044928 is an application to register a court order appointing RSM Canada Limited as receiver for the property registered December 11, 2019.

VECTOR FINANCIAL SERVICES LIMITED

-and-

Court File No. CV-19-00631363-00CL
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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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