

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**MOTION RECORD**

Re: Final Distribution and Discharge  
(Motion Returnable July 22, 2020)

July 14, 2020

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**TAB 1**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, and  
Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**NOTICE OF MOTION**

**THE RECEIVER, RSM Canada Limited (“RSM” or the “Receiver”)**, will make a motion before a Judge of the Ontario Superior Court of Justice at 9:30 a.m. on July 22, 2020, or as soon thereafter as the motion can be heard. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Elizabeth Rathbone at [elizabeth.rathbone@paliareroland.com](mailto:elizabeth.rathbone@paliareroland.com). When e-mailing Ms. Rathbone to confirm whether you will be participating on the motion, ensure that you have provided your name, email address and the identity of the party you represent and their interest.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference due to the COVID-19 crisis.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached as Appendix "A" to this Notice of Motion:

- (a) approving the Third Report of the Receiver, dated July 14, 2020 (the "**Third Report**") and the Receiver's conduct and activities set out therein;
- (b) approving the Receiver's statement of receipts and disbursements for the period December 6, 2019 to June 30, 2020 (the "**R&D**");
- (c) approving the fees of the Receiver for the period April 1, 2020 to June 30, 2020;
- (d) approving the fees of Paliare Roland Rosenberg Rothstein LLP ("**Paliare**") for the period April 1, 2020 to June 30, 2020;
- (e) approving the fees of Cassels Brock & Blackwell LLP ("**Cassels**") for the period April 1, 2020 to June 30, 2020; and
- (f) setting out the manner in which entitlement to the funds in the Receiver's possession, following payment of the fees and disbursements of the Receiver and its counsel, will be determined.

2. Such further relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:****A. Background**

3. Pursuant to an application made by Vector Financial Services Limited (“**Vector**”), by Order of the Ontario Superior Court of Justice (the “**Court**”) dated December 6, 2019 (the “**Appointment Order**”), RSM was appointed as receiver of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the “**Property**”) owned as at the date of the appointment of the Receiver by 168 Old Kennedy Inc. (“**168**” or the “**Debtor**”);

4. The Property consists of approximately 1.46 acres of vacant undeveloped land located at 168 Old Kennedy Road, Markham, Ontario;

5. Vector is a private lender and mortgage broker in the business of originating and administering mortgage loans in Ontario. Vector holds a first mortgage in the principal amount of \$5,940,000 against the Property (the “**Vector Mortgage**”);

6. Alai, previously 2080552 Ontario Inc., and the second mortgagee, sold the Property to Le Jardin Investments Inc., in trust, pursuant to an agreement of purchase and sale made February 7, 2017. Title to the Property was taken in the name of the Debtor, “168 Old Kennedy Inc.”. The Receiver understands that the principal of Alai is Mr. Alawn Lai;

7. In the Receiver’s second report to the Court dated April 29, 2020 (the “**Second Report**”), the Receiver provided the Court with details of the proposed sale transaction respecting the Property. Pursuant to the terms of the agreement of purchase and sale between the Receiver and Wu, Xiao Ling In Trust for a company to be incorporated (the

“**Purchaser**”) dated April 6, 2020 and amending agreement made as of April 21, 2020 (collectively, the “**APS**”), the sale transaction was scheduled to close on the tenth business day following the date of the Approval and Vesting Order, May 26, 2020. At the request of the Purchaser, the Receiver agreed to move the closing date to May 29, 2020. The closing date was subsequently extended to June 1, 2020;

8. The closing of the sale was completed on June 1, 2020. Included in the consideration paid to the Receiver was a promissory note in the amount of \$2,333,000 issued by Vector to the Receiver (the “**Promissory Note**”);

9. The Appointment Order, the Second Report and other court documents have been posted on the Receiver’s website, which can be found at [rsmcanada.com/168-Old-Kennedy-Road](http://rsmcanada.com/168-Old-Kennedy-Road);

**B. Interim Distribution**

10. Following the closing of the sale of the Property, and receipt by the Receiver of the net sales proceeds therefrom, the Receiver made the following payments:

- (a) the advance under Receiver Certificate No. 1 of \$15,000, plus interest of \$896.56 to Vector;
- (b) the Interim Distribution to Vector comprised of:
  - (i) a cash payment in the amount of \$4,288,220.33, net of the Holdback Amount defined below; and
  - (ii) the return to Vector for cancellation of the Promissory Note; and

- (c) the amount of \$71,262.51, being the total amounts owing to the Receiver, Paliare and Cassels on account of their respective unpaid accounts as of March 31, 2020;

11. At the May 11, 2020 hearing for approval of the sale, Chaitons LLP ("**Chaitons**"), counsel for 10114812 Canada Corporation, the third mortgagee, ("**10114812**") opposed the approval of the Transaction and the payment of certain charges included on Vector's payout statement. At the hearing, after Justice Hainey informed the parties that he would grant the Approval and Vesting Order, it was agreed that the Receiver would hold back from the distribution to be made to Vector, an amount to be agreed upon between the Receiver and Chaitons. If the parties could not agree to the amount of the holdback, Chaitons and the Receiver would seek the direction of the Court;

12. On May 11, 2020, Chaitons and the Receiver agreed that that the amount of the holdback would be \$201,075.50 (the "**Holdback Amount**");

**C. Secured Claims**

13. As set out above, the Interim Distribution paid to Vector did not include the Holdback Amount. Vector has provided to the Receiver a Mortgage Payout Statement as at July 22, 2020 (the "**Vector Payout Statement**"), which indicates that the remaining balance owing to Vector, is \$204,426.76, which represents the Holdback Amount plus interest of \$3,351.26 between June 3, 2020 and July 22, 2020 (the "**Vector Unpaid Amount**"). In addition to this amount, the Receiver understands that Vector may incur further legal fees until completion of the receivership proceedings (such additional fees, plus the Vector Unpaid Amount being the "**Vector Balance**");

14. Alai registered a charge/mortgage of \$1,020,038.15 against the Property (the "**Alai Charge**"). As at the date of the Receiver's appointment, the Alai Charge was subordinate to the mortgage granted by the Debtor to Vector;

15. The Alai Charge comprised certain amounts that the Debtor agreed to pay to Alai as part of the transaction in which the Debtor purchased the Property from Alai. These amounts included the sum of \$469,277.66 of development fees paid to the City of Markham with respect to the Property (the "**Development Fees**");

16. On May 13, 2020, Henry K. Hui & Associates, counsel to Alai, provided the Receiver with a copy of the Alai Charge and indicated to the Receiver that "\$1,020,038.15 is owing. No payment had been made on this charge since May 15, 2017";

17. On May 22, 2020, Paliare responded to Mr. Hui and indicated that the Receiver had some other documentation in its possession that suggested a lesser amount may be owing. Mr. Hui responded that day and indicated that Mr. Lai will claim \$696,361.66. The Receiver has made a variety of inquiries in an attempt to determine the amount of the Debtor's indebtedness to Alai, as detailed in the Third Report;

18. Schedule "C" to the Alai Charge ("**Schedule "C"**") states that "The Purchaser covenants and agrees to pay to the Vendor in addition to the purchase price herein, on the earlier of the day it enters into a subdivision agreement or site plan agreement, or the day the purchaser receives credits or reductions (the "**Development Date**")...". The Receiver understands that "The Purchaser" in this case is 168 Old Kennedy Inc., being the name in which the Purchaser took title to the Property;



19. Based on the wording set out in Schedule “C”, it appears to the Receiver that the amount(s) secured by the Alai Charge only become payable to Alai on the Development Date (as that term is defined in Schedule “C”). Accordingly, by e-mail on July 9, 2020, the Receiver requested that Alai provide to the Receiver a copy of, or evidence that the Purchaser entered into, a subdivision agreement or site plan agreement, or the day the purchaser receives credits or reductions;

20. With reference to the site plan development, the Receiver was provided by the Assistant City Solicitor, City of Markham (the “**City Solicitor**”) with a Site Plan Control Agreement made November 30, 2011 and a Residential Subdivision Agreement made February 28, 2011 and amended on April 18, 2012 that were entered into by the City of Markham and Cottonlane Estates Inc. The City Solicitor advised that through the operation of the Planning Act these agreements run with the lands;

21. The Receiver has not, as of the date of the Third Report, received information from Alai that would enable the Receiver to advise the Court of the amount, if any, that is presently owed and secured by the Alai Charge.

22. The Receiver has received an opinion from Paliare that, based on the assumptions and subject to the qualifications set out therein, the Alai Charge is a valid and enforceable charge on the Property. However, Paliare’s legal opinion on the Alai Charge does not opine on whether the conditions in the mortgage have been satisfied or what amounts, if any, are owing under the mortgage;

23. The Receiver is not in a position to recommend to the Court whether any funds in the Receiver’s possession should be paid to Alai;

24. The Receiver has not requested, as of the date of the Third Report, that Paliare Roland provide to the Receiver an opinion on the security held by 10114812, the third mortgagee, as the Receiver had anticipated that Alai would have provided the information requested by the Receiver to support the amount claimed under the Alai Charge;

25. The Receiver is therefore seeking the advice and direction of the Court and is requesting that the Court make an Order setting out the manner in which entitlement to the remaining funds in the Receiver's possession (including, for certainty, the Vector Balance), following payment of the fees and disbursements of the Receiver and its counsel, be determined. The Receiver proposes that a motion be scheduled for the interested stakeholders to address issues related to the quantum and priority of the remaining funds in the Receiver's possession;

**D. Statutory and other grounds**

26. Rules 1.04, 2.03, 3.02(1), 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

27. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The Third Report of the Receiver dated July 14, 2020; and
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 14, 2020

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Lawyers for the Receiver

**TO: THE SERVICE LIST**

**Schedule "A"****Conference Details to join Motion via Zoom**

Join Zoom Meeting

<https://zoom.us/j/95852543756?pwd=YzRxdHRrNm4vbWVWTDlpTUE5SHQxZz09>

Court File No. CV-19-00631363-00CL  
168 OLD KENNEDY INC.

VECTOR FINANCIAL SERVICES LIMITED

-and-

**Applicant**

**Respondents**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF MOTION**

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Lawyers for the Receiver

## APPENDIX "A"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THE 22 <sup>nd</sup> DAY OF
	)	
JUSTICE KOEHNEN	)	JULY, 2020

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**ORDER**

**THIS MOTION**, made by RSM Canada Limited (“**RSM**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the “**Property**”) owned as at the date of the appointment of the Receiver by 168 Old Kennedy Inc. (the “**Debtor**”), for an order, among other things, approving the fees of the Receiver and its counsel, was heard this day by videoconference due to the COVID-19 crisis.

**ON READING** the Third Report to the Court of the Receiver dated July 14, 2020 (the “**Third 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 July 14, 2020, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
  2. **THIS COURT ORDERS AND DECLARES** that the Third Report and the conduct and activities of the Receiver to July 14, 2020 set out therein be and are hereby approved.
  3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period April 1, 2020 to June 30, 2020 be and are hereby approved.
  4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel Paliare Roland Rosenberg Rothstein LLP and Cassels Brock & Blackwell LLP for the period April 1, 2020 to June 30, 2020 be and are hereby approved.
  5. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements for the period December 6, 2019 to June 30, 2020, as set out in the Third Report, be and is hereby approved.
-



VECTOR FINANCIAL SERVICES LIMITED

-and-

Court File No. CV-19-00631363-00CL  
168 OLD KENNEDY INC.

**Applicant**

**Respondents**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
  
PROCEEDING COMMENCED AT  
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**ORDER**

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Lawyers for the Receiver

## TAB 2

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

**BETWEEN:**

**VECTOR FINANCIAL SERVICES LIMITED**

Applicant

- and -

**168 OLD KENNEDY INC.**

Respondent

**THIRD REPORT OF THE RECEIVER OF  
168 OLD KENNEDY ROAD, MARKHAM, ONTARIO**

**July 14, 2020**

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Legal Opinion on Alai Security.....	N
Affidavit of Daniel Weisz .....	O
Affidavit of Michelle Jackson.....	P
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## I. INTRODUCTION

1. Pursuant to an application made by Vector Financial Services Limited (“**Vector**”), by Order of the Ontario Superior Court of Justice (“the **Court**”) dated December 6, 2019 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**” or the “**Receiver**”) was appointed as receiver of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the “**Property**”) owned as at the date of the Appointment Order by 168 Old Kennedy Inc. (“**168**” or the “**Debtor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. On February 10, 2020, the Receiver brought a motion, returnable on February 21, 2020, for the purpose of, *inter alia*, approving a sale process and authorizing the Receiver to give access to the fenced-in area of the Property without the Receiver or any party accessing the Property being deemed to be in possession of the Property. A copy of the Receiver’s first report to the Court dated February 4, 2020, without appendices, in support of the motion is attached hereto as **Appendix “B”**.
3. On February 21, 2020, the Honourable Justice McEwen issued an Order (the “**Sale Process Order**”), *inter alia*, approving and authorizing the Receiver to commence the sale process described in the First Report and authorizing the Receiver to give access to the fenced-in area on the Property without the Receiver or any other party being deemed to be in possession of the Property. Copies of the Sale Process Order and Endorsement of Justice McEwen are attached hereto as **Appendix “C”**.
4. On April 29, 2020, the Receiver brought a motion, returnable on May 11, 2020, for the purpose of, *inter alia*:

- 
- (i) approval of an agreement of purchase and sale between the Receiver and Wu, Xiao Ling In Trust for a company to be incorporated (the “**Purchaser**”) dated April 6, 2020 and amending agreement made as of April 21, 2020 (collectively, the “**APS**”), and obtaining an order authorizing and directing the Receiver to enter into and carry out the terms of the transaction contemplated therein (the “**Transaction**”); and
  - (ii) authorizing the Receiver to make the Interim Distribution to Vector (as defined in the Second Report).

A copy of the Receiver’s second report to the Court dated April 29, 2020, without appendices, in support of the motion is attached hereto as **Appendix “D”**.

5. On May 11, 2020, the Honourable Justice Hailey granted:

- (i) an Approval and Vesting Order approving the APS, authorizing the Receiver to complete the Transaction and, upon the completion of the Transaction and the issuance of a Receiver’s Certificate, vesting title in and to the Purchased Assets in the Purchaser (the “**Approval and Vesting Order**”); and
- (ii) an Order, *inter alia*, authorizing the Receiver to make the Interim Distribution (the “**Distribution Order**”).

A copy of the Approval and Vesting Order is attached hereto as **Appendix “E”**.

Copies of the Distribution Order and Endorsement of Justice Hailey are attached hereto as **Appendix “F”**.



6. The Appointment Order, the First Report, the Second Report, the Sale Process Order, the Approval and Vesting Order, the Distribution Order and other court documents have been posted on the Receiver's website, which can be found at [rsmcanada.com/168-Old-Kennedy-Road](http://rsmcanada.com/168-Old-Kennedy-Road).
7. The Receiver has retained the firm of Paliare Roland Rosenberg Rothstein LLP ("**Paliare**") to act as the Receiver's independent legal counsel.
8. The Receiver has retained the firm of Cassels Brock & Blackwell LLP ("**Cassels**"), Vector's counsel, to provide the legal advice and assistance required by the Receiver to effect and complete the sale of the Property.

## II. PURPOSE OF REPORT

9. The purpose of this third report to the Court (the "**Third Report**") is to:
  - (a) report to the Court on the activities of the Receiver from the date of the Second Report to July 14, 2020;
  - (b) report to the Court on the closing of the sale of the Property;
  - (c) report to the Court on the claim of Alai Developments Inc. ("**Alai**"), the creditor holding the second mortgage on the Property prior to its sale (the "**Second Mortgage**");
  - (d) report to the Court on the opinion obtained by the Receiver on the Second Mortgage;
  - (e) provide the Court with a statement of the Receiver's cash receipts and disbursements for the period December 6, 2019 to June 30, 2020 (the "**R&D**"); and
  - (f) seek an order:



- 
- i. setting out the manner in which entitlement to the funds presently in the Receiver's possession, following payment of the fees and disbursements of the Receiver and its counsel, be determined;
  - ii. approving the Third Report and the Receiver's conduct and activities set out therein;
  - iii. approving the R&D;
  - iv. approving the fees of the Receiver for the period April 1, 2020 to June 30, 2020;
  - v. approving the fees of Paliare for the period April 1, 2020 to June 30, 2020; and
  - vi. approving the fees of Cassels for the period April 1, 2020 to June 30, 2020.

### **Terms of Reference**

10. In preparing this report and making the comments herein, the Receiver has relied upon certain information from third-party sources (collectively, the "**Information**"). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
11. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

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12. Defined terms in the Third Report have, unless indicated otherwise herein, the same meanings as set out in the First Report and the Second Report.

### III. BACKGROUND

13. The Property consists of approximately 1.46 acres of vacant undeveloped land located at 168 Old Kennedy Road, Markham, Ontario.
14. Vector is a private lender and mortgage broker and held, prior to the sale of the Property, a first mortgage against the Property (the "**Vector Mortgage**").
15. Alai, previously 2080552 Ontario Inc., and the second mortgagee, sold the Property to Le Jardin Investments Inc., in trust, pursuant to an agreement of purchase and sale made February 5, 2017. Title to the Property was taken in the name of the Debtor, "168 Old Kennedy Inc.". The Receiver understands that the principal of Alai is Mr. Alawn Lai.
16. The Debtor failed to repay the principal amount of the loan due and owing on the maturity date of the Vector Mortgage and to pay other amounts properly due and owing under the Vector Mortgage.
17. Vector sought the appointment of the Receiver pursuant to a Notice of Application dated November 22, 2019.
18. On December 6, 2019, the Court issued an Order appointing RSM as receiver of the Property.

### IV. COMPLETION OF THE SALE OF THE PROPERTY

19. In the Second Report, the Receiver provided the Court with details of the proposed sale transaction with the Purchaser respecting the Property. Pursuant to the terms

of the APS, the sale transaction was scheduled to close on the tenth business day following the date of the Approval and Vesting Order, May 26, 2020. At the request of the Purchaser, the Receiver agreed to move the closing date to May 29, 2020. The closing date was subsequently extended to June 1, 2020.

20. The closing of the sale was completed on June 1, 2020. Included in the consideration paid to the Receiver was a promissory note in the amount of \$2,333,000 issued by Vector to the Receiver (the "**Promissory Note**").

#### **V. PAYMENTS MADE FOLLOWING THE CLOSING OF THE SALE OF THE PROPERTY**

21. Following the closing of the sale of the Property, and receipt by the Receiver of the net sales proceeds therefrom, the Receiver made the following payments:
- (i) the advance under Receiver Certificate No. 1 of \$15,000, plus interest of \$896.56 to Vector;
  - (ii) the Interim Distribution to Vector comprised of:
    - (i) a cash payment in the amount of \$4,288,220.33, net of the Holdback Amount defined below; and
    - (ii) the return to Vector for cancellation of the Promissory Note; and
  - (iii) the amount of \$71,262.51, being the total amounts owing to the Receiver, Paliare and Cassels on account of their respective unpaid accounts as of March 31, 2020.



## VI. THE HOLDBACK

22. At the May 11, 2020 hearing for approval of the Transaction, Chaitons LLP (“**Chaitons**”), counsel for 10114812 Canada Corporation, the third mortgagee, (“**10114812**”) opposed the approval of the Transaction and the payment of certain charges included on the Vector Mortgage Payout Statement that was included as Appendix “E” to the Second Report. At the hearing, after Justice Hainey informed the parties that he would grant the Approval and Vesting Order, it was agreed that the Receiver would hold back from the distribution to be made to Vector, an amount to be agreed upon between the Receiver and Chaitons. If the parties could not agree to the amount of the holdback, Chaitons and the Receiver would seek the direction of the Court.
23. On May 11, 2020, Chaitons and the Receiver agreed that that the amount of the holdback would be \$201,075.50 (the “**Holdback Amount**”).

## VII. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

24. Attached as **Appendix “G”** is the R&D. During this period, receipts were \$7,565,043 and disbursements were \$520,480, resulting in an excess of receipts over disbursements of \$7,044,563 before the Interim Distribution. After payment to Vector of the Interim Distribution and the Receiver Certificate advance, and the Receiver’s expenses, the excess of receipts over disbursements as at June 30, 2020 was \$423,343. This balance does not include certain professional fees paid after June 30, 2020.

## VIII. SECURED CLAIMS

25. As set out above, the Interim Distribution paid to Vector did not include the Holdback Amount. Vector has provided to the Receiver a Mortgage Payout Statement as at July 22, 2020 (the “**Vector Payout Statement**”), which indicates that the remaining balance owing to Vector is \$204,426.76, which represents the Holdback Amount plus interest of \$3,351.26 between June 3, 2020 and July 22, 2020 (the “**Vector Unpaid Amount**”). In addition to this amount, the Receiver understands that Vector may incur further legal fees until completion of the receivership proceedings (such additional fees, plus the Vector Unpaid Amount being the “**Vector Balance**”). A copy of the Vector Payout Statement is attached hereto as **Appendix “H”**.
26. Alai registered a charge/mortgage of \$1,020,038.15 against the Property (the “**Alai Charge**”). As at the date of the Receiver’s appointment, the Alai Charge was subordinate to the mortgage granted by the Debtor to Vector.
27. The Alai Charge comprised certain amounts that the Debtor agreed to pay to Alai as part of the transaction in which the Debtor purchased the Property from Alai. These amounts included the sum of \$469,277.66 of development fees paid to the City of Markham with respect to the Property (the “**Development Fees**”). A copy of the Alai Charge is attached hereto as **Appendix “I”**.
28. On May 13, 2020, Henry K. Hui & Associates, counsel to Alai, provided the Receiver with a copy of the Alai Charge and indicated to the Receiver that “\$1,020,038.15 is owing. No payment had been made on this charge since May 15, 2017.”

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29. On May 22, 2020, Paliare responded to Mr. Hui and indicated that the Receiver had some other documentation in its possession that suggested a lesser amount may be owing. Mr. Hui responded that day and indicated that Mr. Lai will claim \$696,361.66. A copy of the e-mail exchange between Paliare and Mr. Hui is attached hereto as **Appendix “J”**.
30. Due to the Receiver's uncertainty as to the amount of the Debtor's indebtedness to Alai, the Receiver:
- (i) indirectly through the Debtor's counsel, and directly through Paliare, made enquiries of the City of Markham to determine whether the Development Fees or any portion thereof have been repaid to any party. On June 26, 2020, Mr. Francesco Santaguida, Assistant City Solicitor, City of Markham, (the “**City Solicitor**”) confirmed to Paliare that none of the Development Fees was repaid (the “**City of Markham June 26 E-mail**”). A copy of the City of Markham June 26 E-mail is attached hereto as **Appendix “K”**; and
  - (ii) requested on June 23, 2019, by e-mail from Paliare Roland to Mr. Hui, that Mr. Lai provide a statutory declaration confirming that the Development Fees were not repaid to Alai. A copy of the form of Statutory Declaration is attached hereto as **Appendix “L”**. As at the date of the Third Report, Alai has not returned the Statutory Declaration to the Receiver.
31. Schedule “C” to the Alai Charge (“**Schedule “C”**”) states that “The Purchaser covenants and agrees to pay to the Vendor in addition to the purchase price herein, on the earlier of the day it enters into a subdivision agreement or site plan agreement, or the day the purchaser receives credits or reductions (the



“**Development Date**”)... ”. The Receiver understands that “The Purchaser” in this case is 168 Old Kennedy Inc., being the name in which the Purchaser took title to the property.

32. Based on the wording set out in Schedule “C”, it appears to the Receiver that the amount(s) secured by the mortgage only become payable to Alai on the Development Date (as that term is defined in Schedule “C”). Accordingly, by e-mail on July 9, 2020 (the “**July 9 E-Mail**”), the Receiver requested that Alai provide to the Receiver a copy of, or evidence that the Purchaser entered into, a subdivision agreement or site plan agreement, or the day the purchaser receives credits or reductions. A copy of the July 9 E-Mail, without appendix, is attached hereto as **Appendix “M”**. As at the date of the Third Report, the Receiver has not received a response to its request.
33. With reference to the site plan development, the Receiver was provided by the City Solicitor with a Site Plan Control Agreement made November 30, 2011 and a Residential Subdivision Agreement made February 28, 2011 and amended on April 18, 2012 that were entered into by the City of Markham and Cottonlane Estates Inc. The City Solicitor advised that through the operation of the Planning Act these agreements run with the lands.
34. The Receiver has not, as of the date of the Third Report, received information from Alai that would enable the Receiver to advise the Court of the amount, if any, that is presently secured by and owing under the Alai Charge.
35. The Receiver notes that it has received an opinion from Paliare that, based on the assumptions and subject to the qualifications set out therein, the Second Mortgage

is a valid and enforceable charge on the Property (the “**Legal Opinion on Alai Security**”). However, the Legal Opinion on the Alai Security does not opine on whether the conditions in the Second Mortgage have been satisfied or what amounts, if any, are owing under the Second Mortgage. A copy of the Legal Opinion on Alai Security is attached hereto as **Appendix “N”**.

36. Based on the foregoing, the Receiver is not in a position to recommend to the Court whether any funds in the Receiver’s possession should be paid to Alai.
37. The Receiver has not requested, as of the date of this Third Report, that Paliare Roland provide to the Receiver an opinion on the security held by 10114812, the third mortgagee, as the Receiver had anticipated that Alai would have provided the information requested by the Receiver to support the amount claimed under the Alai Charge.
38. The Receiver is therefore seeking the advice and direction of the Court and is requesting that the Court make an Order setting out the manner in which entitlement to the remaining funds in the Receiver’s possession (including, for certainty, the Vector Balance), following payment of the fees and disbursements of the Receiver and its counsel, be determined. If the Court agrees it is appropriate, the Receiver proposes that a motion be scheduled for the interested stakeholders to address issues related to the quantum and priority of the remaining funds in the Receiver’s possession.

#### **IX. PROFESSIONAL FEES**

39. The Receiver’s accounts total \$48,277.00 in fees, plus HST of \$6,276.02 for a total of \$54,553.02 for the period April 1, 2020 to June 30, 2020 (the “**Receiver’s**”).



**Accounts**”). A copy of the Receiver’s Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Daniel Weisz sworn July 14, 2020 attached hereto as **Appendix “O”**.

40. The accounts of the Receiver’s counsel, Paliare, total \$41,593.00 in fees, \$377.25 in disbursements and \$5,445.47 in HST for a total of \$47,415.72 for the period April 1, 2020 to June 30, 2020 (the **“Paliare Roland Accounts”**). A copy of the Paliare Roland Accounts, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Accounts, is set out in the Affidavit of Michelle Jackson sworn July 13, 2020 attached to this report as **Appendix “P”**.
41. The accounts of the Receiver’s counsel, Cassels, total \$49,858.40 in fees and disbursements and \$6,465.69 in HST for a total of \$56,324.09 for the period April 1, 2020 to June 30, 2020 (the **“Cassels Accounts”**). A copy of the Cassels Accounts, together with a summary of the personnel, hours and hourly rates described in the Cassels Accounts, is set out in the Affidavits of Jonathan Freeman sworn June 10, 2020 and July 6, 2020 attached to this report as **Appendix “Q”**.

## **X. CONCLUSION**

42. The Receiver respectfully requests that the Court make an Order:
  - (i) setting out the manner in which entitlement to the funds in the Receiver’s possession, following payment of the fees and disbursements of the Receiver and its counsel, be determined;
  - (ii) approving the Third Report and the Receiver’s conduct and activities set out therein;

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- (iii) approving the R&D; and
  - (iv) approving the Receiver's Accounts, the Paliare Roland Accounts and the Cassels Accounts.

All of which is respectfully submitted to this Court as of this 14<sup>th</sup> day of July, 2020.

**RSM CANADA LIMITED**

In its capacity as Court-appointed Receiver of  
168 Old Kennedy Road, Markham, Ontario  
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT  
Senior Vice President

## APPENDIX "A"

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

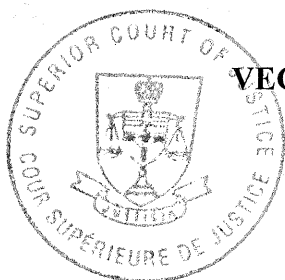
**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE )  
 JUSTICE )  
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The Honourable  
 Mr. Justice  
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)  
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FRIDAY, THE 6th  
 DAY OF DECEMBER, 2019



**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

**ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver (in such capacities, the "Receiver") without security, of the real property municipally known as 168 Old Kennedy Road, Markham, Ontario and legally described as set out on Schedule "A" hereto (the "Property") owned by 168 Old Kennedy Inc. (the "Debtor"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Noah Mintz sworn November 20, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties listed on the Counsel Slip, no one appearing for any other party although duly served as appears from the affidavit of service of Christopher Maniaci sworn November 26, 2019 and the affidavit of service of Deborah Ferguson sworn December 2, 2019 and on reading the consent of RSM Canada Limited to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of the Property.

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that 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 exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (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 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 engage consultants, appraisers, agents, real estate brokers, 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;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor with respect to the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to settle, extend or compromise any indebtedness owing to the Debtor with respect to the Property;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) 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 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;
- (h) to market the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (i) to sell, convey, transfer, lease or assign the Property with the approval of this Court, and notice under section 31 of the Ontario *Mortgages Act* shall not be required;

- (j) to apply for any vesting order or other orders necessary to convey the Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting the Property;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on 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;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (m) to apply for any permits, licences, approvals or permissions with respect to the Property 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 Debtor;
- (n) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and
- (o) 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 Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its 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 grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that 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 Property, 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 5 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 due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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 PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of 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 Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Receiver, or affecting the Property, are hereby stayed and suspended 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 paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall 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 Debtor in connection with or relating to the Property, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor in connection with or relating to the Property or statutory or regulatory mandates for the

supply of goods and/or services, 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 Debtor in connection with or relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver.

### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that 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 the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the Property, 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**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor. 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*.

### **PIPEDA**

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **NO POSSESSION BY THE RECEIVER**

15. THIS COURT ORDERS that the Receiver shall not go into possession of the Property. For greater certainty, the Receiver shall not, as a result of taking any steps to secure or maintain the Property, be deemed to be in possession of the Property.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross

negligence or wilful misconduct on its part, 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*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that 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 legal fees and disbursements, incurred at the standard 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. THIS COURT ORDERS that the Receiver be 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 \$100,000 (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, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that 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. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that 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.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [rsmcanada.com/168-old-kennedy-road](http://rsmcanada.com/168-old-kennedy-road).

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

27. THIS COURT ORDERS that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

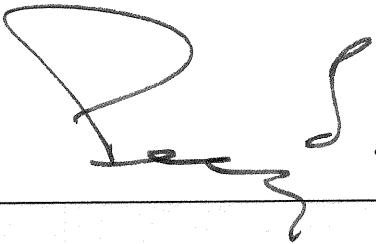
29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. 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.

31. THIS COURT ORDERS that 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. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (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.



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LE / DANS LE REGISTRE NO:

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PER / PAR: JS

**SCHEDULE "A"****LEGAL DESCRIPTION OF THE PROPERTY**

The lands and premises municipally known as 168 Old Kennedy Road, Markham, Ontario and legally described as:

**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 "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver and manager (the "Receiver") of the real property municipally known as 168 Old Kennedy Road, Markham, Ontario owned by 168 Old Kennedy Inc. (the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an application having Court file number \_\_-CL-\_\_\_\_\_, 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 \$ \_\_\_\_\_ which 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 Bank of \_\_\_\_\_ 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, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in 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 Toronto, Ontario.

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\_\_.

RSM CANADA LIMITED, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

## APPENDIX “B”

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

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

**BETWEEN:**

**VECTOR FINANCIAL SERVICES LIMITED**

Applicant

- and -

**168 OLD KENNEDY INC.**

Respondent

**FIRST REPORT OF THE RECEIVER OF  
168 OLD KENNEDY ROAD, MARKHAM, ONTARIO**

**February 4, 2020**

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## I. INTRODUCTION

1. Pursuant to an application made by Vector Financial Services Limited (“**Vector**”), by Order of the Ontario Superior Court of Justice (“the **Court**”) dated December 6, 2019 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**” or the “**Receiver**”) was appointed as receiver of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the “**Property**”) owned by 168 Old Kennedy Inc. (“**168**” or the “**Debtor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
  - a) exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - b) 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 engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - c) market the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
  - d) sell, convey, transfer, lease or assign the Property with the approval of this Court.

3. The Appointment Order also provides that the Receiver shall not go into possession of the Property and shall not, as a result of taking any steps to secure or maintain the Property, be deemed to be in possession of the Property.
4. The Appointment Order and other court documents have been posted on the Receiver's website, which can be found at [rsmcanada.com/168-Old-Kennedy-Road](http://rsmcanada.com/168-Old-Kennedy-Road).
5. The Receiver has retained the firm of Paliare Roland Rosenberg Rothstein LLP ("**Paliare**") to act as the Receiver's independent legal counsel.

## II. PURPOSE OF REPORT

6. The purpose of this first report to the Court (the "**First Report**") is to:
  - (a) report to the Court on the activities of the Receiver from the date of its appointment to January 31, 2020;
  - (b) provide background information about the Property;
  - (c) summarize the recommended sale and marketing process by which offers will be solicited for the Property, including through the retention of Avison Young Commercial Real Estate (Ontario ) Inc. ("**Avison Young**") to act as listing agent in the sale process (the "**Sale Process**");
  - (d) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period December 6, 2019 to January 31, 2020; and
  - (e) seek an order:
    - i. approving the Sale Process;



- 
- ii. authorizing the Receiver to give access to the fenced-in area on the Property to the Receiver, its agents, any prospective purchaser of the Property and/or their agents, or any other party and declaring that the aforementioned access to the Property shall not result in the Receiver or any other party being deemed to be in possession of the Property;
  - iii. approving the First Report and the Receiver's conduct and activities set out therein;
  - iv. approving the R&D (defined below);
  - v. approving the fees of the Receiver for the period ending January 31, 2020; and
  - vi. approving the fees of Paliare for the period ending January 31, 2020.

### **Terms of Reference**

7. In preparing this report and making the comments herein, the Receiver has relied upon certain information from third-party sources (collectively, the "**Information**"). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

### III. BACKGROUND

9. The Property consists of approximately 1.46 acres of vacant undeveloped land located at 168 Old Kennedy Road, Markham, Ontario.
10. Vector is a private lender and mortgage broker in the business of originating and administering mortgage loans in Ontario. Vector holds a first mortgage in the principal amount of \$5,940,000 against the Property. As of November 15, 2019, the amount outstanding under the mortgage held by Vector was \$6,214,096.36.
11. The Debtor failed to repay the principal amount of the loan due and owing on the maturity date of the mortgage and to pay other amounts properly due and owing under the mortgage.
12. Vector sought the appointment of the Receiver pursuant to a Notice of Application dated November 22, 2019.
13. On December 6, 2019, the Court issued an Order appointing RSM as receiver of the Property.

### IV. RECEIVER'S ACTIVITIES TO DATE

#### *Securing the Property*

14. In order to monitor the condition of the Property on an ongoing basis, the Receiver entered into an agreement with Richmond Advisory Services Inc. ("**Richmond**") for Richmond to provide certain property management services including:
  - i) periodic site inspection of the Property; and

- ii) obtaining quotes for repairs and maintenance and overseeing work to be done, as required.
15. The Receiver attended at the Property and noted that the site is surrounded on all four sides by metal fencing. The fencing along the south side of the Property appeared to be part of a fence relating to a neighbouring property, with temporary metal fencing installed along the other three sides of the Property. The Receiver noted that the temporary fencing along the west side of the Property had been moved to create an opening that allowed entry inside the fenced-in area, as well as another gap in the fencing. The Receiver arranged for Richmond to attend at the Property to close the openings in the temporary fencing, and chain and padlock the fence to prevent unauthorized access to the Property.
16. Based on information received from the Debtor's counsel on December 19, 2019 (discussed below), the Receiver determined that the temporary fencing was rented by 168 from Quick Fence Inc. ("**Quick Fence**") and that rental payments were in arrears. The Receiver has made arrangements with Quick Fence for the continuing rental of the temporary fencing.
17. As the Receiver has not taken possession of the Property, site inspections consist of checking the condition of the fence and for any signs of trespass or garbage dumping on the Property, but have not to date included entering inside the fenced area.

***Insurance***

18. The Receiver obtained its own liability insurance with coverage effective December 6, 2019. The Receiver's current coverage is scheduled to expire on June 6, 2020.
19. As the Property is vacant, site inspections of the Property are required by the Receiver's insurer. Periodic site inspections will be continued until the Property is sold.

***Statutory Notices***

20. On December 16, 2019, the Receiver sent a Notice and Statement of Receiver pursuant to Section 245(1) of the Bankruptcy and Insolvency Act (the "**BIA**") to the known creditors of the Property (the "**245 Notice**") as identified through a title search of the Property and a Personal Property Security Registration System ("**PPSA**") search of the Respondent. The Receiver requested of the Debtor a list of the creditors of the Property, but no information was provided as of December 16, 2019. A copy of the 245 Notice is attached hereto as **Appendix "B"**.
21. On December 19, 2019, and subsequent to the mailing of the 245 Notice, the Receiver received from the Debtor's counsel a list of creditors. The 245 Notice was mailed on December 23, 2019 to creditors on that list who were not previously sent the 245 Notice.

## V. SALE PROCESS

22. The Appointment Order authorizes the Receiver to market the Property for sale, including advertising and soliciting offers in respect of the Property.
23. In furtherance of same, the Receiver invited three realtors, Avison Young, CBRE Limited (“**CBRE**”) and Colliers International (“**Colliers**”), to each submit listing proposals for the marketing and sale of the Property.
24. After reviewing the proposals submitted including discussions/correspondence with each of Avison Young, CBRE and Colliers, the Receiver, with the concurrence of Vector, entered into a listing agreement with Avison Young to market the Property for sale. A copy of the listing agreement, which has been executed by the Receiver and Avison Young, is attached hereto as Appendix “**C**” (the “**Listing Agreement**”).
25. The recommended Sale Process for the Property is summarized in the table below:

<b>Summary of Sale Process</b>		
<b>Milestone</b>	<b>Description of Activities</b>	<b>Timeline</b>
<i>Phase 1 – Underwriting</i>		
Due diligence	➤ Avison Young to review all available documents concerning the Property, including environmental reports and planning and development reports.	Completed
Finalize marketing materials	➤ Avison Young and the Receiver to: <ul style="list-style-type: none"> <li>○ populate an online data room;</li> <li>○ prepare a confidentiality agreement (“CA”);</li> </ul>	Ongoing

<b>Summary of Sale Process</b>		
<b>Milestone</b>	<b>Description of Activities</b>	<b>Timeline</b>
	<ul style="list-style-type: none"> <li>○ prepare form of Agreement of Purchase and Sale (“APS”).</li> </ul>	
Prospect Identification	<ul style="list-style-type: none"> <li>➤ Avison Young to develop a master prospect list. Avison Young will qualify and prioritize prospects; and</li> <li>➤ Avison Young will have pre-marketing discussions with targeted developers.</li> </ul>	Ongoing
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including:               <ul style="list-style-type: none"> <li>○ offering summary and marketing materials printed;</li> <li>○ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition);</li> <li>○ telephone and email canvassing of leading prospects; and</li> <li>○ meet with and interview bidders.</li> </ul> </li> </ul>	Commenced February 3, 2020
Stage 2	<ul style="list-style-type: none"> <li>➤ Avison Young to provide detailed information to qualified prospects which sign the CA, and access to the data room; and</li> <li>➤ Avison Young to facilitate all diligence by interested parties.</li> </ul>	February 2020
Stage 3	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit APS’ or other proposals.</li> </ul>	Deadline for offers currently scheduled for March 12, 2020
<i>Phase 3 – Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> <li>➤ Proposal short listing</li> <li>➤ 2<sup>nd</sup> Round Bids - Prospective purchasers may be asked to re-submit APS’.</li> </ul>	March 2020
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	March to April 2020

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	May to June 2020

26. Additional aspects of the Sale Process include:
- a) the Real Property will be marketed on an “as is, where is” basis;
  - b) the Receiver will have the right to reject any and all offers, including the highest offer; and
  - c) any transaction will be subject to Court approval.
27. The Receiver will provide information on the Receiver’s/Avison Young’s marketing efforts at the time that the Receiver seeks the approval of the Court of an agreement of purchase and sale entered into by the Receiver.

#### **VI. ACCESS TO THE PROPERTY DURING THE SALE PROCESS**

28. In order not to be deemed as having taken possession of the Property, the Receiver and Richmond have not, to date, entered inside the fenced-in area at the Property. As part of the sale process for the Property to be conducted, the Receiver anticipates that a prospective purchaser may wish to access the fenced-in area on the Property for various purposes including having its consultant or expert walk on the property, conduct testing or prepare a report on the condition of the Property, etc. The Receiver is concerned that such access by the Receiver, its agents (including Avison Young and RAS), or any prospective purchaser of the Property and/or their agents, or any other party, may result in the Receiver or that party being deemed to be in possession of the Property.

29. Therefore the Receiver requests that the Court make an Order authorizing the Receiver to give access to the fenced-in area on the Property to the Receiver, its agents, or any prospective purchaser of the Property and/or their agents, or any other party, and declaring that the aforementioned access to the Property shall not result in the Receiver or any other party being deemed to be in possession of the Property.

## VII. SECURED OR PRIORITY CLAIMS

30. The following is a list of the PPSA claims registered against 168 in the Personal Property Security Registration System as of November 7, 2019 and in the Land Registry (“PIN”) as of November 11, 2019:

Name of Registrant	Amount	PPSA	PIN
Vector Financial Services Limited	\$5,940,000	√	√
Alai Developments Inc. (formerly 2080552 Ontario Inc.)	\$1,020,038		√
10114812 Canada Corporation	\$3,500,000		√
Olympia Trust Company	Unknown	√	

31. Attached hereto as **Appendices “D”** and **“E”**, respectively, are copies of the PPSA and PIN searches.
32. The validity and enforceability of the above-noted claims have not, as of the date of this report, been reviewed by the Receiver. The Receiver will seek an opinion from Paliare on the validity and enforceability of secured claims against the Property at the time the Receiver seeks an Order authorizing the Receiver to make a distribution of funds in the Receiver’s possession and will provide to the Court at that time a summary of the opinion received.



33. In addition to the above, the Receiver has contacted the City of Markham which has informed the Receiver that the unpaid property taxes in respect of the Property were \$14,764.37 for 2019 taxes. The first instalment payable for 2020 taxes is \$5,898 due February 5, 2020. The Receiver will address the payment of the outstanding property taxes upon the sale of the Property.

#### VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

34. Attached as **Appendix "F"** is the Receiver's Interim Statement of Receipts and Disbursements (the "**R&D**") for the period December 6, 2019 to January 31, 2020. During this period, receipts were \$15,000, consisting of an advance of \$15,000 from Vector under Receiver Certificate No. 1, and disbursements were \$3,998, resulting in a net cash balance of \$11,002.
35. The above-noted advance from Vector, plus accrued interest thereon, will be repaid by the Receiver upon the sale of the Property.

#### IX. PROFESSIONAL FEES

36. The Receiver's accounts for the period ending January 31, 2020 total \$23,057.50 in fees, plus HST of \$2,997.48 for a total amount of \$26,054.98 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Daniel Weisz sworn February 4, 2020 attached hereto as Appendix "**G**".

- 
37. The account of the Receiver's counsel, Paliare, totals \$3,060.00 in fees and \$397.80 in HST for a total of \$3,457.80 for the period ending January 31, 2020 (the "**Paliare Roland Account**"). A copy of the Paliare Roland Account, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Account, is set out in the Affidavit of Sarita Sanasie sworn February 4, 2020 attached to this report as Appendix "H".

## **X. CONCLUSION**

38. The Receiver respectfully requests that the Court make an Order:
- a) approving the Sale Process;
  - b) authorizing the Receiver to give access to the fenced-in area on the Property to the Receiver, its agents, or any prospective purchaser of the Property and/or their agents, or any other party, and declaring that the aforementioned access to the Property shall not result in the Receiver or any other party being deemed to be in possession of the Property;
  - c) approving the First Report and the Receiver's conduct and activities to January 31, 2020;
  - d) approving the R&D; and
  - e) approving the Receiver's Accounts and the Paliare Roland Account.

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All of which is respectfully submitted to this Court as of this 4<sup>th</sup> day of February, 2020.

**RSM CANADA LIMITED**

In its capacity as Court-appointed Receiver of  
168 Old Kennedy Road, Markham, Ontario  
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT  
Senior Vice President

## **APPENDIX “C”**



**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

**APPROVAL OF SALE PROCESS AND AVISON YOUNG LISTING AGREEMENT**

2. **THIS COURT ORDERS** that the retention of Avison Young Commercial Real Estate (Ontario) Inc. ("**Avison Young**") as the listing agent for the Property and the entering into by the Receiver of the listing agreement with Avison Young (the "**Listing Agreement**") be and is hereby approved.

3. **THIS COURT ORDERS** that the sale process (the "**Sale Process**"), as described in the First Report, be and hereby is approved.

4. **THIS COURT ORDERS** that the Receiver is hereby authorized to commence and carry out the Sale Process and to take such further steps as are considered necessary or desirable in carrying out the terms of the Sale Process, subject to prior approval of this Court being obtained before completion of any transactions under the Sale Process.

5. **THIS COURT ORDERS** that the Receiver is authorized to give access to the fenced-in area on the Property, as described in the First Report, to the Receiver, its agents, or any prospective purchaser of the Property and/or their agents, or any other party, and declares that such access shall not result in the Receiver or any other party being deemed to be in possession of the Property.

6. **THIS COURT ORDERS** that the Receiver and its respective affiliates, partners, directors, officers, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct



of the Receiver in performing its obligations under the Sale Process as determined by this Court.

**APPROVAL OF RECEIVER'S FIRST REPORT AND CONDUCT**

7. **THIS COURT ORDERS** that the First Report, and the conduct and activities of the Receiver, as described therein, be and hereby are approved.

8. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements as of January 31, 2020 as set out in the First Report, be and is hereby approved.

9. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period ended January 31, 2020, as set out in the First Report, be and are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Paliare Roland Rosenberg Rothstein LLP, for the period ended January 31, 2020, as set out in the First Report, be and are hereby approved.

**GENERAL**

11. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.



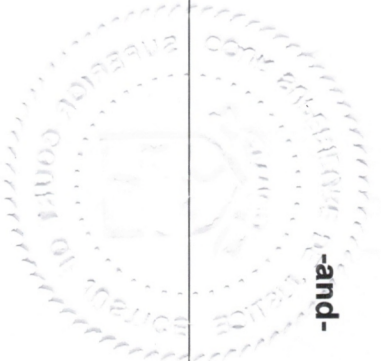
SUPERIOR COURT OF JUSTICE  
ENTERED  
FEB 21 2020  
COUR SUPÉRIEURE DE JUSTICE  
ENTRÉ

JP

**RECTOR FINANCIAL SERVICES LIMITED**

**Applicant**

**-and-**



Court File No. CV-19-00631363-00CL  
168 OLD KENNEDY INC.

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT  
TORONTO**

**SALE PROCESS ORDER  
(FEBRUARY 21, 2020)**

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
155 Wellington Street West  
35th Floor  
Toronto, ON M5V 3H1  
Tel: 416.646.4300  
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Lawyers for the Receiver RSM Canada Limited



COUNSEL SLIP

COURT FILE

NO.: CV-19-04631363-0061DATE: FEB 21 2020NO. ON LIST 6TITLE OF  
PROCEEDING

VECTOR FINANCIAL SERVICES LIMITED

188 OLD KENNEY INC.

V.

COUNSEL FOR:

- PLAINTIFF(S)  
 APPLICANT(S)  
 PETITIONER(S)

Jeffrey Larry  
 Sr Receiver RSM Canada

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COUNSEL FOR:

- DEFENDANT(S)  
 RESPONDENT(S)

PHONE \_\_\_\_\_

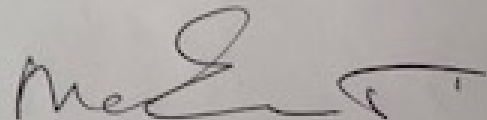
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JUDICIAL NOTES:

21 Feb 20

The Sales Process Order shall go as per the draft filed & signed. I have reviewed it with counsel. The Sales Process set out is fair & reasonable and it is also fair & reasonable that the Receiver or parties not be deemed to be in possession so that the Property can be reasonably marketed. The motion was unopposed.



## **APPENDIX “D”**

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

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

**BETWEEN:**

**VECTOR FINANCIAL SERVICES LIMITED**

Applicant

- and -

**168 OLD KENNEDY INC.**

Respondent

**SECOND REPORT OF THE RECEIVER OF  
168 OLD KENNEDY ROAD, MARKHAM, ONTARIO**

**April 29, 2020**

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## I. INTRODUCTION

1. Pursuant to an application made by Vector Financial Services Limited (“**Vector**”), by Order of the Ontario Superior Court of Justice (“the **Court**”) dated December 6, 2019 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**” or the “**Receiver**”) was appointed as receiver of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the “**Property**”) owned by 168 Old Kennedy Inc. (“**168**” or the “**Debtor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
  - market the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
  - sell, convey, transfer, lease or assign the Property with the approval of this Court.
3. The Appointment Order also provides that the Receiver shall not go into possession of the Property and shall not, as a result of taking any steps to secure or maintain the Property, be deemed to be in possession of the Property.
4. On February 10, 2020, the Receiver brought a motion, returnable on February 21, 2020, for the purpose of, *inter alia*, approving a sale process and authorizing the Receiver to give access to the fenced-in area of the Property without the Receiver or any party accessing the Property being deemed to be in possession of the Property. A copy of the Receiver’s first report to the Court dated February 4, 2020, without appendices, in support of the motion is attached hereto as **Appendix “B”**.

- 
5. On February 21, 2020, the Honourable Justice McEwen issued an Order (the “**Sale Process Order**”), *inter alia*, approving and authorizing the Receiver to commence the sale process described in the First Report and authorizing the Receiver to give access to the fenced-in area on the Property without the Receiver or any other party being deemed to be in possession of the Property. Copies of the Sale Process Order and Endorsement of Justice McEwen are attached hereto as **Appendix “C”**.
  6. The Appointment Order, the First Report, the Sale Process Order and other court documents have been posted on the Receiver’s website, which can be found at [rsmcanada.com/168-Old-Kennedy-Road](http://rsmcanada.com/168-Old-Kennedy-Road).
  7. The Receiver has retained the firm of Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”) to act as the Receiver’s independent legal counsel.
  8. The Receiver has retained Cassels Brock & Blackwell LLP (“**Cassels**”), Vector’s counsel, to provide the legal advice and assistance required by the Receiver to effect and complete the sale of the Property.

## II. PURPOSE OF REPORT

9. The purpose of this second report to the Court (the “**Second Report**”) is to:
  - (a) report to the Court on the activities of the Receiver from the date of the First Report to April 29, 2020;
  - (b) report to the Court on the results of the sale process for the Property;
  - (c) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period December 6, 2019 to April 22, 2020 (the “**R&D**”); and

- 
- (d) seek an order:
- i. authorizing and directing the Receiver to enter into and carry out the terms of the transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver and Wu, Xiao Ling In Trust for a company to be incorporated (the “**Purchaser**”) dated April 6, 2020 and amending agreement made as of April 21, 2020 (collectively, the “**APS**”), together with any further minor amendments thereto deemed necessary by the Receiver in its sole opinion;
  - ii. vesting title to the Property in the Purchaser, or into such entity as the Purchaser may further direct in writing, free and clear of claims and encumbrances, upon closing of the Transaction and the delivery of a Receiver’s certificate to the Purchaser;
  - iii. sealing Confidential Appendix “**K**” to the Second Report until the closing of the sale of the Property;
  - iv. directing amount(s) to be paid by the Receiver from the net proceeds from the sale of the Property;
  - v. authorizing the Receiver to make the Interim Distribution (as defined herein) to Vector;
  - vi. approving the Second Report and the Receiver’s conduct and activities set out therein;
  - vii. approving the R&D;
  - viii. approving the fees of the Receiver for the period February 1, 2020 to March 31, 2020;



- ix. approving the fees of Paliare for the period February 1, 2020 to March 31, 2020; and
- x. approving the fees of Cassels for the period January 1, 2020 to March 31, 2020.

### **Terms of Reference**

- 10. In preparing this report and making the comments herein, the Receiver has relied upon certain information from third-party sources (collectively, the “**Information**”). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
- 11. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

### **III. BACKGROUND**

- 12. The Property consists of approximately 1.46 acres of vacant undeveloped land located at 168 Old Kennedy Road, Markham, Ontario.
- 13. Vector is a private lender and mortgage broker in the business of originating and administering mortgage loans in Ontario. Vector holds a first mortgage in the principal amount of \$5,940,000 against the Property (the “**Vector Mortgage**”). As of November 15, 2019, the amount outstanding under the mortgage held by Vector was \$6,214,096.36.

14. The Debtor failed to repay the principal amount of the loan due and owing on the maturity date of the mortgage and to pay other amounts properly due and owing under the mortgage.
15. Vector sought the appointment of the Receiver pursuant to a Notice of Application dated November 22, 2019.
16. On December 6, 2019, the Court issued an Order appointing RSM as receiver of the Property.

#### IV. MARKETING OF THE PROPERTY

17. The Receiver's plan to market the Property, including the engagement of Avison Young, was set out in the First Report and approved in the Sales Process Order.
18. The marketing of the Property commenced on February 3, 2020. Interested parties were informed that the deadline for offers for the Property to be received was 4:00 p.m. on March 12, 2020 (the "**Offer Deadline**").
19. The Receiver provided Avison Young with a baseline Agreement of Purchase and Sale (the "**Baseline APS**") for distribution to parties who intended to make an offer to purchase the Property and requested that all offers be made on the form of the Baseline APS, with any changes marked.
20. Further steps taken by the Receiver/Avison in connection with the marketing of the Property include the following:
  - on February 3 and 26, and March 10, 2020, emails giving notice of the acquisition opportunity were sent to 889, 1,283 and 1298 parties, respectively;

- 
- a brochure (the “**Brochure**”) was prepared and provided to interested parties who clicked on the link in the email;
  - on February 11 and 13, 2020, an advertisement of the acquisition opportunity was published in the Globe and Mail newspaper (the “**Globe Advertisement**”);
  - on February 14, 2020, a listing for the Property was posted on the MLS system (the “**MLS Listing**”);
  - on February 14, 2020, two “For Sale” banners were installed on the fence at the Property; and
  - an online data room was set up and parties that signed a confidentiality agreement (“**CA**”) were given access to additional information on the Property.
21. Copies of the Brochure, the Globe Advertisement and the MLS Listing are attached collectively to this report as **Appendix “D”**.
  22. In addition, and to further assist with the sales process, the Receiver engaged Pinchin Ltd. to prepare an updated Phase I Environmental Site Assessment (the “**Phase I ESA**”) for the Property. A copy of the Phase I ESA dated March 10, 2020 received from Pinchin Ltd., was posted to the data room on March 10, 2020.
  23. Avison’s final Progress Report dated April 22, 2020, which includes the names of the parties that executed a CA, is attached to this report as **Tab 1** to Confidential Appendix “**K**”.

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## V. SUMMARY OF OFFERS RECEIVED

24. As of the Offer Deadline, seven offers were submitted to Avison for the Property. A summary of the offers received is attached at **Tab 2** to Confidential Appendix “**K**” (the “**First Round Offers**”).
25. Following receipt of the First Round Offers, and after review and consultation with Avison and Vector, parties representing the four offers regarded as having the most favourable terms (the “**Four Parties**”) were contacted and invited to improve or amend their offers and resubmit by noon of March 17, 2020. Two parties elected to amend their original offers to purchase as of March 17, 2020 (the “**Second Round Offers**”). A copy of the summary of Second Round Offers is attached at **Tab 3** to Confidential Appendix “**K**”.
26. Subsequently, on March 19, 2020, one of the Four Parties withdrew its offer.
27. After reviewing the remaining three offers and consulting with Avison and Vector, on March 27, 2020, the Four Parties were advised by Avison that Vector was prepared to provide financing to a prospective purchaser, and the Four Parties were provided with the terms of the potential financing (the “**Vector Financing**”). The Four Parties were invited to amend their offers, including taking into consideration the Vector Financing, and resubmit their offers by March 31, 2020.
28. Three parties elected to amend their offers to purchase and the party that had previously advised that it was withdrawing its offer, confirmed that it had no further interest in the Property (the “**Third Round Offers**”). A copy of the summary of Third Round Offers is attached at **Tab 4** to Confidential Appendix “**K**”.

29. The Receiver reviewed the terms of the Third Round Offers. After considering the Third Round Offers, including the offered purchase prices, proposed due diligence periods, due diligence terms, likelihood of closing on a timely basis, etc., the Receiver proceeded, with the concurrence of Vector, to finalize the offer submitted by the Purchaser. The Receiver worked with Cassels to have certain of the terms of the Purchaser's offer amended in order for the Receiver to be in a position to accept that offer.
30. On April 8, 2020, the Receiver accepted the Purchaser's offer and executed the APS. The APS was subject to a 10 calendar day conditional period, due to expire on April 18, 2020.
31. On April 17, 2020, the Purchaser advised that while it was prepared to proceed with the purchase, it was seeking a reduction in the purchase price, as well as an extension of three days to the due diligence period. After negotiations between the Receiver and the Purchaser, on April 22, 2020, a Waiver and Amending Agreement made as of April 21, 2020 (the "**Amending Agreement**") was executed and the APS became final, subject to the approval of the Court. Terms of the Amending Agreement included an adjustment to the purchase price, an increase in the quantum of the deposit due, and the waiver by the Purchaser of its conditions.

## **VI. THE APS**

32. The APS conforms substantially with the Baseline APS. Salient terms of the APS include (all capitalized terms in this section not defined in the APS are as otherwise defined in the Second Report):

- 
- a deposit of 15% of the Purchase Price;
  - the offer is conditional on court approval and the issuance of an order vesting title to the purchased assets in the Purchaser or its assignee free and clear of claims and encumbrances, other than those specifically itemized in the APS;
  - the Purchaser is buying the Property on an “as is, where is” basis; and
  - closing of the sale provided for in the APS is scheduled to occur on the tenth Business Day following the date on which the Vesting Order is granted, or such other date as agreed between the Purchaser and the Receiver.
33. Copies of the executed APS including the Amending Agreement are attached to this report at **Tab 5** and **Tab 6**, respectively, to Confidential Appendix “**K**”.

## VII. APPROVAL OF THE SALE

34. The Receiver believes that the marketing process undertaken by the Receiver was appropriate for the type of property in question and provided sufficient market exposure to the Property. The Property was exposed to the market since February 3, 2020, notice of the sale of the Property was sent to more than 1,200 parties, and the Property was listed for sale on MLS, on Avison’s website and advertised in the Globe and Mail newspaper.
35. As a result of the marketing efforts undertaken:
- CAs were signed in respect of 16 potential purchasers; and
  - seven offers to purchase the Property were received from prospective purchasers.

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36. The Receiver is of the view that sufficient efforts were made to obtain the best price for the Property and the marketing process was conducted fairly. The Receiver regards the APS as the offer received for the Property which is the most advantageous to the creditors of 168, taking into account the current economic climate in light of the COVID-19 pandemic, ongoing costs being incurred, including the interest continuing to accrue on the Debtor's indebtedness to Vector. The Receiver therefore recommends that this Court approve the APS and grant an Order vesting title in the purchased assets in the Purchaser or its assignee upon the closing of the Transaction.
37. The Receiver believes that details of the offers submitted for the Property including matters relating thereto should be kept confidential until the closing of the transaction. The Receiver is of the view that public disclosure thereof would have a negative impact on the future marketing of the Property, should the transaction with the Purchaser not be approved or completed.
38. The Receiver therefore respectfully requests that Confidential Appendix "K" be sealed until after the closing of the sale of the Property.

#### **VIII. SECURED OR PRIORITY CLAIMS**

39. The Receiver received on April 28, 2020 from Vector a Mortgage Payout Statement current to May 26, 2020 (the "**Vector Statement**") which would be the closing date for the sale per the APS if the Vesting order is granted on May 11, 2020. According to the Vector Statement, the amount owing by the Debtor to Vector and required to discharge the first mortgage will be, as of May 26, 2020, \$6,825,009.22, inclusive of principal, interest, fees and the \$15,000 advance, plus

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interest, for which Receiver Certificate No. 1 was issued. A copy of the Vector Statement is attached to this report at **Appendix “E”**.

40. The Receiver has received an opinion from Paliare that, based on the assumptions and subject to the qualifications set out therein, the Vector Mortgage is a valid first charge on the Property (the **“Legal Opinion on Vector Security”**). A copy of the Legal Opinion on Vector Security is attached hereto as **Appendix “F”**.

## **IX. INTERIM DISTRIBUTION**

41. Following the closing of the sale of the Property, and receipt by the Receiver of the net sales proceeds therefrom, funds will be available for the Receiver to make an interim distribution. The Receiver proposes that following closing of the sale of the Property, after payment of property taxes of approximately \$27,500 (based on the balance owing as at April 27, 2020), and commissions payable to Avison Young in respect of the sale of the Property, the Receiver be authorized to additionally pay out, from the proceeds of sale, the following amounts:
- the advance totaling \$15,000 under Receiver Certificate No. 1 plus interest (the **“Receiver Certificate Advance”**) to Vector;
  - the amount of \$71,262.51, being the total of amounts owing to the Receiver, Paliare and Cassels on account of their respective unpaid accounts as of March 31, 2020 (collectively, the **“Receiver’s Expenses”**); and
  - the Interim Distribution (as defined below) to Vector.
42. Vector has requested that the Receiver pay to Vector the balance set out on the Vector Statement, net of the Receiver Certificate Advance.



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43. Interest continues to accrue on the outstanding balance of the Vector Mortgage. Therefore, the Receiver is of the view that it is in the interests of all parties that the amounts owing to Vector be paid out promptly as an interim distribution to Vector in order to prevent the accrual of further interest.
44. The Receiver understands that Vector is providing financing to the Purchaser for a portion of the purchase price payable on closing in the amount of \$4,800,000 (the “**Mortgage Amount**”). Accordingly, the interim distribution to be paid to Vector will consist of (i) a non-cash payment representing the Mortgage Amount, plus (ii) a cash payment representing the amount set out on the Vector Statement less the Mortgage Amount and the Receiver Certificate Advance (the “**Interim Distribution**”).
45. The Receiver will be requesting from the other parties who have mortgages over the Property that they provide to the Receiver copies of their security documents and statements of amounts owing to them. The Receiver will report to the Court on the status of the subsequent mortgagees, and the Receiver’s proposed final distribution, in the Receiver’s next report to the Court.
46. The Receiver therefore recommends and requests that this Court direct that:
- the Receiver be authorized to pay to Vector the Receiver Certificate Advance; and
  - the Receiver be authorized to make the Interim Distribution to Vector.

#### **X. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

47. Attached as **Appendix “G”** is the Receiver’s Interim Statement of Receipts and Disbursements (the “**R&D**”) for the period December 6, 2019 to April 22, 2020.

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During this period, receipts were \$15,039, including an advance of \$15,000 from Vector under Receiver Certificate No. 1, and disbursements were \$10,620, resulting in a net cash balance of \$4,419.

#### **XI. PROFESSIONAL FEES**

48. The Receiver's accounts for the period February 1, 2020 to March 31, 2020 total \$18,360.00 in fees, plus HST of \$2,386.80 for a total amount of \$20,746.80 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Daniel Weisz sworn April 28, 2020 attached hereto as **Appendix "H"**.
49. The accounts of the Receiver's counsel, Paliare, totals \$11,022.50 in fees, \$534.00 in disbursements and \$1,460.75 in HST for a total of \$13,017.25 for the period February 1, 2020 to March 31, 2020 (the "**Paliare Roland Accounts**"). A copy of the Paliare Roland Accounts, together with a summary of the personnel, hours and hourly rates described in the Paliare Roland Accounts, is set out in the Affidavit of Michelle Jackson sworn April 27, 2020 attached to this report as **Appendix "I"**.
50. The account of the Receiver's counsel, Cassels, totals \$7,068.10 in fees and disbursements and \$917.58 in HST for a total of \$7,985.68 for the period January 1, 2020 to March 31, 2020 (the "**Cassels Account**"). A copy of the Cassels Account, together with a summary of the personnel, hours and hourly rates described in the Cassels Account, is set out in the Affidavit of Jonathan Freeman sworn April 27, 2020 attached to this report as **Appendix "J"**.

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## XII. CONCLUSION

51. The Receiver respectfully requests that the Court make an Order:

- (i) authorizing and directing the Receiver to enter into and carry out the terms of the APS, together with any further minor amendments thereto deemed necessary by the Receiver in its sole opinion;
- (ii) vesting title to the Property in the Purchaser, or as the Purchaser may further direct in writing, free and clear of claims and encumbrances, upon closing of the transaction under the APS and the delivery of a Receiver's certificate to the Purchaser;
- (iii) sealing Confidential Appendix "K" to the Second Report until the closing of the sale of the Property;
- (iv) directing amount(s) to be paid by the Receiver from the net proceeds from the sale of the Property;
- (v) authorizing the Receiver to make the Interim Distribution to Vector;
- (vi) approving the Second Report and the Receiver's conduct and activities set out therein;
- (vii) approving the R&D; and
- (viii) approving the Receiver's Accounts, the Paliare Roland Accounts and the Cassels Account.

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All of which is respectfully submitted to this Court as of this 29th day of April, 2020.

**RSM CANADA LIMITED**

In its capacity as Court-appointed Receiver of  
168 Old Kennedy Road, Markham, Ontario  
and not in its personal capacity



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT  
Senior Vice President

## **APPENDIX “E”**

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 11 <sup>TH</sup> DAY
JUSTICE <i>HAINES</i>	)	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

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

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

**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-**

168 OLD KENNEDY INC.

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**APPROVAL AND VESTING ORDER**

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Lawyers for the Receiver

## APPENDIX "F"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE *HAINES* )  
 )  
 )  
 )

MONDAY THE 11<sup>TH</sup> DAY

OF MAY, 2020

BETWEEN:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

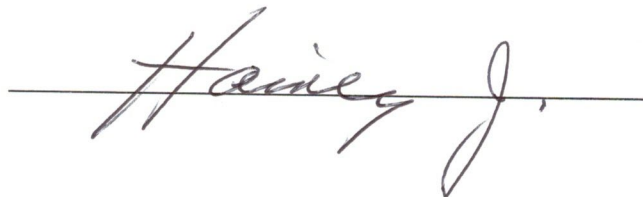
**DISTRIBUTION ORDER**

**THIS MOTION**, made by RSM Canada Limited ("**RSM**"), in its capacity as the Court-appointed receiver (the "**Receiver**"), without security, of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the "**Property**") owned by 168 Old Kennedy Inc. (the "**Debtor**"), seeking among other relief, an Order approving a sale process, was heard this day by videoconference due to the COVID-19 crisis.

**ON READING** the Second Report of the Receiver, dated April 29, 2020 (the "**Second Report**") and the confidential appendices attached thereto, 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** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Second Report and the conduct and activities of the Receiver to April 29, 2020 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel for the period ended March 31, 2020 as set out in the Second Report be and are hereby approved.
4. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements for the period December 6, 2019 to April 22, 2020 as set out in the Second Report, be and is hereby approved.
5. **THIS COURT ORDERS** that Confidential Appendix "K" to the Second Report be sealed until the closing of the sale of the Property.
6. **THIS COURT ORDERS** that the Receiver is authorized to pay from the net proceeds of sale of the Property, after payment of property taxes and commissions payable to Avison Young in respect of the sale of the Property, the following (subject to such hold backs as the Receiver determines, in its sole discretion, are appropriate):
  - (a) the advance totaling \$15,000 under Receiver Certificate No. 1 plus interest to Vector Financial Services Limited ("**Vector**");
  - (b) the amount of \$71,262.51, being the total of amounts owing to the Receiver and its counsel on account of their respective unpaid accounts; and
  - (c) the Interim Distribution (as defined in the Second Report) to Vector.
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.

A handwritten signature in cursive script, reading "Hamley J.", is written over a horizontal line. The signature is fluid and elegant, with a prominent initial 'H' and a large, looping 'J'.

VECTOR FINANCIAL SERVICES LIMITED

-and-

Court File No. CV-19-00631363-00CL  
168 OLD KENNEDY INC.

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
  
PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for the Receiver RSM Canada Limited



RE VECTOR FINANCIAL

- ① This application was heard by Videconference (Zoom) in accordance with the changes to the operation of the Commercial List in light of the Covid-19 crisis and the Chief Justice's Notices to the Profession.
- ② I am satisfied that the transaction should be approved despite Mr. Chaiton's objections because,
  - (a) The property was publicly listed for sale and was exposed to the market for a ~~short~~ sufficient period of time;

- (2)
- (b) The sales process conducted by the licensee was consistent with the court-approved process and provided appropriate exposure of the property to the market;
- (c) The property was marketed by an experienced commercial real estate brokerage;
- (d) There were numerous offers and the selling price is fair and reasonable under all of the circumstances including the Covid-19 crisis.
- (3) I have concluded that these factors are consistent with a robust and properly run sales process in accordance with the Sordair principles.



④ I accept the Receiver's opinion that this transaction represents the most advantageous sale of the property for the Debtor's creditors. There are no exceptional circumstances that would warrant the Court to reject the Receiver's recommendation.

⑤ I am also satisfied that Confidential Appendix "K" to the Receiver's Second Report should be sealed in accordance with the principles in the Sierra Club of Canada decision.

⑥ The application is granted on the terms of the following order:

- (a) Approval and Vesting Order; and
  - (b) Distribution Order.
- (7) These orders are effective today and do not have to be entered.

Harvey J.