

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

THE HONOURABLE) WEDNESDAY, THE 13th
JUSTICE GILMORE)
DAY OF JANUARY, 2021

BETWEEN:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

HIGHYON DEVELOPMENT NO. 118 LP and HIGHYON GP NO. 118 CORP.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") over the lands and premises municipally known as 9113 & 9125 Bathurst Street, Richmond Hill, Ontario (the "**Property**") owned by Highyon Development No. 118 LP ("**Highyon**" or 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 6736238 Canada Inc. O/A Altona Group (the "**Purchaser**") made as of December 21, 2020 and appended to the Report of the Receiver dated January 5, 2021 (the "**Report**"), and vesting in Altona (Bathurst) Developments Inc. Highyon's 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 parties who appeared, and no one else appearing for any other person on the service list, although properly served as appears from the affidavit of Michelle Jackson sworn January 6, 2021, 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 Altona (Bathurst) Developments Inc., 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 Gilmore dated September 8, 2020; (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 Land Titles Division of York (No. 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 Altona (Bathurst) Developments Inc. 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 Altona (Bathurst) Developments Inc. 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.



Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00637687-00CL

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and –

HIGHYON DEVELOPMENT NO. 118 LP and HIGHYON GP NO. 118 CORP.

Respondent

APPLICATION UNDER section 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 Gilmore of the Ontario Superior Court of Justice (the "**Court**") dated September 8, 2020, with effect from September 18, 2020, RSM Canada Limited was appointed as the receiver (the "**Receiver**") of 9113 & 9125 Bathurst Street, Richmond Hill, Ontario (the "**Property**") owned by Highyon Development No. 118 LP (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 December 21, 2020 (the "**Sale Agreement**") between the Receiver and 6736238 Canada Inc. O/A Altona Group

(the "**Purchaser**") and provided for the vesting in Altona (Bathurst) Developments Inc. 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:

1. 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;
2. 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;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at **[TIME]** on **▶ [DATE]**.

RSM Canada Limited, solely in its capacity as Court-appointed Receiver of 9113 & 9125 Bathurst Street, Richmond Hill, 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 Highyon Development No. 118 LP'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: 9113 & 9125 Bathurst Street, Richmond Hill, Ontario

Legal Description: Firstly:

PART LOT 12, PLAN 1960, DESIGNATED AS PART 1, 65R39076;
SUBJECT TO AN EASEMENT IN GROSS AS IN YR3104512;
CITY OF RICHMOND HILL

Secondly:

PT LTS 11 & 12 PL 1960 (VGN) PTS 1 & 2 65R30010 EXCEPT
PTS 6 & 7 65R34155 & EXCEPT PT 7 65R34243 AND SAVE &
EXCEPT PTS 2 & 3, ON 6535056; TOWN OF RICHMOND HILL

PIN: Firstly: 03215-1459 (LT)

Secondly: 03215-1223 (LT)

Registry Office: Land Titles Division of York (No.65)

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. YR2257403 is a Partial Discharge of Charge registered on February 19, 2015 in favour of Royal Bank of Canada.
2. Instrument No. YR2739495 is a Charge registered on September 29, 2017 in favour of Vector Financial Services Limited (“**Vector**”) in the amount of \$5,500,000.00.
3. Instrument No. YR 2739496 is a General Assignment of Rents registered on September 29, 2017 in favour of Vector as collateral security to the Charge registered as Instrument No. YR2739495.
4. Instrument No. YR3017154 is an Agreement Amending Charge registered on October 4, 2019 which amends the Charge registered as Instrument No. YR2739495.
5. Instrument No. YR3104513 is a Postponement of Interest granted by Vector in favour of Alectra Utilities Corporation (“**Alectra**”) pursuant to which Vector postpones its Charge registered as Instrument No. YR2739495 to the easement in favour of Alectra registered as Instrument No. YR3104512.
6. Instrument No. YR2838164 is a Charge registered on June 15, 2018 in favour of George Naim Jada (“**Jada**”) in the amount of \$425,000.00.
7. Instrument No. YR3104514 is a Postponement of Interest granted by Jada in favour of Alectra pursuant to which Jada postpones its Charge registered as Instrument No. YR2838164 to the easement in favour of Alectra registered as Instrument No. YR3104512.
8. Instrument No. YR3112592 is a Charge registered on June 25, 2020 in favour of Guohui Liang in the amount of \$2,800,000.00.
9. Instrument No. YR3143292 is a Construction Lien registered on September 22, 2020 in favour of Integrated Building & Design Corporation in the amount of \$360,647.00.
10. Instrument No. YR3165672 is a Certificate of Action registered on November 5, 2020 relating to the Construction Lien registered as Instrument No. YR3143292.

**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:
- a. Instrument No. RH69583 is a by-law registered May 14, 1979.
 - b. Instrument No. R368811 is a notice of an agreement registered May 14, 1985 between Pasquale and Lorenza Fedele, as owners and The Corporation of the Town of Richmond Hill (the "**Town**"), as the town regarding the use of the Property.
 - c. Instrument No. 65R30010 is a reference plan registered May 23, 2007.
 - d. Instrument No. YR988709 is an application for absolute title registered May 23, 2007.
 - e. Instrument No. 65R35056 is a reference plan registered July 9, 2014.
 - f. Instrument No. YR2283239 is a notice of an agreement registered April 28, 2015 between Pasquale and Lorenza Fedele, as owners and the Town dealing with the development of the Property.
 - g. Instrument No. YR2315260 is an order of the land registrar registered July 2, 2015 which amends the legal description.
 - h. Instrument No. YR2739494 is a Transfer from 2465900 Ontario Limited to Highyon GP No. 118 Corp. as general partner of Highyon Development No. 118 LP registered September 29, 2017.
 - i. Instrument No. YR3104512 is an Easement in favour of Alectra Utilities Corporation registered June 1, 2020.
 - j. Instrument No. 65R39076 is a reference plan registered September 15, 2020.
 - k. Instrument No. YR3140932 is an application for absolute title registered September 15, 2020.
 - l. Instrument No. 65R39105 is a reference plan registered October 5, 2020.
 - m. Instrument No. YR3166044 is an Application to Register Court Order registered November 6, 2020 appointing RSM Canada Limited as receiver.

VECTOR FINANCIAL SERVICES LIMITED

Applicant

-and-

Court File No. CV-20-00637687-00CL

HIGHYON DEVELOPMENT NO. 118 LP and
HIGHYON GP NO. 118 CORP.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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