

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

THE HONOURABLE)
JUSTICE CAVANAGH)
)

THURSDAY , THE 24th
DAY OF JUNE, 2021

BETWEEN:



MERCHANT REALTY PARTNERS INC., as agent

Applicant

- and -

**2407553 ONTARIO INC., 2384648 ONTARIO INC., 2384646 ONTARIO INC., 24000196
ONTARIO INC. and 2396139 ONTARIO INC.**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as the Court-appointed Receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of 2407553 Ontario Inc., 2384648 Ontario Inc., 2384646 Ontario Inc., 24000196 Ontario Inc., and 2396139 Ontario Inc. (the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 2831949 Ontario Inc. (the “**Purchaser**”) dated as of May 26, 2021 and appended to the Second Report of the Receiver, dated June 15, 2021 (the “**Second Report**”) and vesting in 2847992 Ontario Inc. (“**284 Ontario**”) all of the Receiver’s and all of each of the Debtor’s respective right, title and interest in and to the assets described on Schedule “B” hereto (the “**Purchased Assets**”), was heard this day via videoconference.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, the Debtors, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn June 15, 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 ratified and approved, and 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 284 Ontario.

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 Debtors' respective right, title and interest in and to the Purchased Assets listed on Schedule "B" hereto shall vest absolutely in 284 Ontario, 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 August 6, 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 the Claims, including those referred to in (i), (ii) and (iii) above, 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 Niagara (#59) 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 284 Ontario as the owner of the subject real properties 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 Receiver 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 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in 284 Ontario pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

 Digitally signed
by Mr. Justice
Cavanagh

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-18-00604717-00CL

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

BETWEEN:

MERCHANT REALTY PARTNERS INC., as agent

Applicant

- and -

**2407553 ONTARIO INC., 2384648 ONTARIO INC., 2384646 ONTARIO INC., 24000196
ONTARIO INC. and 2396139 ONTARIO INC.**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Gilmore of the Ontario Superior Court of Justice (the “**Court**”) dated August 6, 2020, Zeifman Partners Inc. was appointed the receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 2407553 Ontario Inc., 2384648 Ontario Inc., 2384646 Ontario Inc., 24000196 Ontario Inc., and 2396139 Ontario Inc. (the “**Debtors**”)

B. Pursuant to an Order of the Court dated [DATE] (the “**Vesting Order**”), the Court approved the agreement of purchase and sale dated May 26, 2021 (the “**Sale Agreement**”) between the Receiver and 2831949 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in 2847992 Ontario Inc. of the Receiver’s and the Debtors respective 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 and/or as the Purchaser directed on or prior to closing of

the Transaction of a certificate confirming: (i) the payment by the Purchaser and/or as the Purchaser directed on or prior to closing of the Transaction 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 and/or as the Purchaser directed on or prior to closing of the Transaction 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].

ZEIFMAN PARTNERS INC., solely in its capacity as Court-appointed receiver of the assets, properties and undertakings of 2407553 Ontario Inc., 2384648 Ontario Inc., 2384646 Ontario Inc., 24000196 Ontario Inc. and 2396139 Ontario Inc, and not in its personal or corporate capacity

Per: _____

Name:

Title:

I have authority to bind the Receiver.

Schedule “B” – Purchased Assets

All of the Receiver’s (if any) and the Debtors’ respective right, title and interest in and to the following real properties together with all Buildings (as defined in the Sale Agreement) situate thereon:

MUNICIPAL ADDRESS: 4100 Bridge Street, Niagara Falls, Ontario
LEGAL DESCRIPTION: PT LT 197 PL 1002 TOWN OF NIAGARA FALLS AS IN RO445645 ;
NIAGARA FALLS

PIN: 64445-0018 (LT)

MUNICIPAL ADDRESS: 4122 Bridge Street and 4538 Cataract Avenue, Niagara Falls, Ontario
LEGAL DESCRIPTION: PT LT 198 PL 1002 AS IN BB45983; CITY OF NIAGARA FALLS

PIN: 64445-0015 (LT)

**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:

4100 Bridge Street, Niagara Falls, Ontario

- (i) Instrument No. SN399125 registered March 13, 2014 is a “Charge” in the amount of \$7,000,000 from 2384648 Ontario Inc. to Marchant Realty Partners Inc.; and
- (ii) Instrument No. SN646419 registered October 16, 2020 is an “APL Court Order” from Superior Court of Justice (Commercial List) to Zeifman Partners Inc.

4122 Bridge Street and 4538 Cataract Avenue, Niagara Falls, Ontario

- (i) Instrument No. SN399123 registered March 13, 2014 is a “Charge” in the amount of \$7,000,000 from 2384646 Ontario Inc. to Marchant Realty Partners Inc.; and
- (ii) Instrument No. SN646419 registered October 16, 2020 is an “APL Court Order” from Superior Court of Justice (Commercial List) to Zeifman Partners Inc.

**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)**

Permitted Encumbrances with respect to the Properties (as defined in the Sale Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on one or more of the parcel registers for the Properties;
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) in effect prior to the Court Order;
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 one or more of the Properties or which may be disclosed on any up-to-date survey of one or more of the Properties;
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; and
7. Any instruments or matters on title to the Properties or otherwise any registrations on title, including those referred to in the thumbnail descriptions of the parcel registers for the PINs for the Properties prior to the date of execution of the agreement of purchase and sale between the Receiver and the Purchaser, other than those registrations set out in Schedule “C” – Claims to be deleted and expunged from title to Real Property, and 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 registered on title to the Properties prior to the date of the Court Order.

MERCHANT REALTY PARTNERS INC., as agent
Applicant

- and -

2407553 ONTARIO INC., et al.
Respondents

ONTARIO

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

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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