

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 2ND
JUSTICE VANMELE) DAY OF SEPTEMBER, 2016

B E T W E E N:

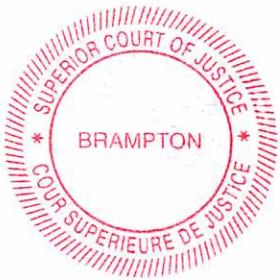
HSBC BANK CANADA

Plaintiff

and

1562569 ONTARIO INC., TREVOR MADDERN and FRANK BOSAGRI

Defendants



APPROVAL AND VESTING ORDER

THIS MOTION, made by Link & Associates Inc., in its capacity as the court-appointed receiver (the “**Receiver**”) of all of the undertaking, property and assets of 1562569 Ontario Inc. (the “**Debtor**”) for an order *inter alia* approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver (in such capacity), as seller, and Nyx Capital Corp. (the “**Purchaser**”), as buyer, dated April 9, 2016, as amended (collectively, the “**Sale Agreement**”), and appended to the Report of the Receiver dated [July 31], 2016 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property and assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, and the Fee Affidavits of Mr. Robert Link and Mr. Timothy Duncan, filed, and on hearing the submissions of counsel for the Receiver and upon being advised of the

Direction re Title for the purposes of closing, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Kellie Engelhardt sworn August 19, 2016, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver in its capacity as court-appointed receiver of Debtor 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 or the entity 2531388 Ontario Inc. specified in the Direction re Title (who shall otherwise also be referred to herein as 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 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 André dated September 22, 2015; (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 Peel 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 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 Registrar of this Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that the Receiver may pay from the proceeds of sale,
 - (a) all transaction or other costs including commissions payable and outstanding municipal and other taxes;
 - (b) its outstanding fees and expenses and those of its counsel as approved herein; and
 - (c) the remaining amount to HSBC Bank Canada up to the amount of its indebtedness, subject to a holdback for future fees and expenses of the Receiver as may be reasonably required;

7. 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;

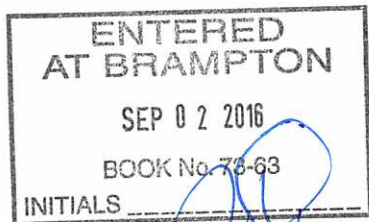
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment,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

8. THIS COURT ORDERS THAT the Confidential Appendix containing the Confidential Supplemental Report filed herein and the exhibits therein, including the Sale Agreement, referred to in the First Report of the Receiver shall be sealed until no earlier than 30 days after successful closing as evidenced by the filing of the Receiver's Certificate as referred to above or further order of this Honourable Court;
9. THIS COURT ORDERS that the Statement of Receipts and Disbursements of the Receiver as set forth in his First Report be and the same are hereby approved.
10. THIS COURT ORDERS that the activities of the Receiver to date, as set out in the First Report, are hereby approved.
11. THIS COURT ORDERS that the fees of the Receiver up to and including the period ending August 15, 2016 as set forth in the Affidavit of Robert Link and the exhibits attached thereto and filed with this Notice of Motion, are hereby approved and allowed.
12. THIS COURT ORDERS that the fees and disbursements of the Receiver's counsel to the period ending July 31, 2016, as set forth in the Fee Affidavit of Timothy Duncan and the exhibits attached thereto and filed with this Notice of Motion, are hereby approved and allowed.
13. 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.

Wesley J.



Schedule "A" - Form of Receiver's Certificate

Court File No. 14-0054 SR

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

HSBC BANK CANADA

Plaintiff

and

1562569 ONTARIO INC., TREVOR MADDERN and FRANK BOSAGRI

Defendants

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice André of the Ontario Superior Court of Justice (the "**Court**") dated September 22, 2015, Link & Associates Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 1562569 Ontario Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated September 2, 2016 the Court approved the agreement of purchase and sale made as of April 9, 2016, as amended (collectively, the "**Sale Agreement**") between the Receiver, in its capacity as court-appointed receiver of the Debtor, and Nyx Capital Corp. (and which has recently directed in writing that title be taken in the name of 2531388 Ontario Inc.) (the latter being the "**Purchaser**") and provided, *inter alia*, for the vesting in the Purchaser of 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 5(b) of Schedule Ai of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; 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.

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 Completion Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 5(b) of Schedule Ai of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on the ____ day of _____, 2016.

LINK & ASSOCIATES INC., in its capacity as Receiver of the undertaking, property and assets of 1562569 ONTARIO INC., and not in its personal capacity

Per: _____

Name: R. Link
Title: President

Schedule "B" - Purchased Assets

All of the right, title and interest, if any, of 1562569 Ontario Inc. in and to the "property" as defined in the clause 11 Schedule Aiii of the Sale Agreement, being the lands and premises legally described and municipally known as follows:

Lot 30, Plan C 14 Toronto; Mississauga (PIN 13157-0074 LT); municipally known as **3032 Kirwin Avenue, Mississauga**

Lot 29, Plan C 14 Toronto; Mississauga (PIN 13157-0073 LT); municipally known as **3026 Kirwin Avenue, Mississauga**

Lot 27, Plan C 14 Toronto; Mississauga (PIN 13157-0071 LT); municipally known as **3016 Kirwin Avenue, Mississauga**

Lot 28 Plan C 14 Toronto, Mississauga (PIN 13157-0072 LT); municipally known as **3020 Kirwin Avenue, Mississauga**

Part Lot 15, Concession 1 NDSTT and Part Lot 5, EHS, "Plan TOR-12", Toronto, as in VS71301, except VS74671 and Plan RD67; together with VS71301; Mississauga. "Amended 1999/05/28, Land Registrar #17" (PIN 13157-0055 LT); municipally known as **3031 Little John Lane, Mississauga**

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

1. Instrument Number PR1519618 registered August 25, 2008 being a Charge in the original principal amount of \$3,125,000 from 1562569 Ontario Inc. in favour of HSBC Bank Canada
2. Instrument Number PR2610195 registered October 1, 2014, being a Construction Lien in the amount of \$2,069,932 in favour of Ryan Associates Inc.
3. Instrument Number PR2622928 registered October 29, 2014 being a Certificate of Action in relation to Construction Lien PR2610195 filed by Ryan Associates Inc.

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

(unaffected by the Vesting Order)

GENERAL

1. Encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with any of the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to the provisions of the Sale Agreement.
2. Registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public utility; or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility.
3. Facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or Governmental Authorities.
4. Restrictive covenants, private deed restrictions, and other similar land use controls or agreements.
5. Encroachments by any of the Real Property over neighbouring lands and encroachments over any of the Real Property by improvements of neighbouring landowners.
6. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grants of the Real Property from the Crown.
7. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario.
8. The provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.
9. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Real Property.
10. Any title defects, irregularities or reservations in respect of any of the Real Property.
11. Other than the Instruments set out in Schedule “C”, all encumbrances, rights, interests, claims, and matters whatsoever relating to or affecting the Real Property, including without limitation those accepted by Purchaser pursuant to the Sale Agreement.

Where used above in this **Schedule “D”** the following terms have the following meanings:

“Applicable Laws” means all statutes, laws, by-laws, regulations, codes, directives, policies, guidelines, procedures, ordinances and orders of any Governmental Authorities or other public authority having jurisdiction and includes without limitation the *Personal Information Protection and Electronic Documents Act (Canada)* as well as any existing and/or future provincial legislation of similar effect, all Environmental Laws and the *Smoke Free Ontario Act*;

“Environmental Laws” means all present and future statutes, laws, by-laws, regulations, rules, directives, guidelines, policies, interpretations, decisions, ordinances, approvals, consents, licenses, permits and orders of Governmental Authorities or other public authorities having jurisdiction relating to or in connection with the environment or the protection or regulation of the environment, including, without limitation, the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended; and

“Governmental Authority” means any government, regulatory authority, government department, agency, commission, board, tribunal or court having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof, and includes, without limitation, the Ontario Ministry of the Environment and the Technical Standards and Safety Authority.

SPECIFIC

1. In relation to PIN 13157-0072 – Instrument Number PR2691542 registered March 30, 2015 being an Application for Government Order registered by The Corporation of the City of Mississauga and, *inter alia*, containing a Property Standard Order
2. In relation to PIN 13157-0071 – Instrument Number PR2691540 registered March 30, 2015 being an Application for Government Order registered by The Corporation of the City of Mississauga and, *inter alia*, containing a Property Standard Order
3. In relation to PIN 13157-0074 – Instrument Number PR2691549 registered March 30, 2015 being an Application for Government Order registered by The Corporation of the City of Mississauga and, *inter alia*, containing a Property Standard Order
4. Instrument Number PR2318509 registered January 9, 2013 being a Notice by The Corporation of the City of Mississauga

HSBC BANK CANADA
Plaintiff

-and- 1562569 ONTARIO INC. et al.
Defendants

Court File No. 14-0054 SR

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON

APPROVAL AND VESTING ORDER FORM

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