

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 14TH
JUSTICE CAVANAGH) DAY OF AUGUST, 2024

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel Inc. in its capacity as the Court-appointed receiver ("**Spergel**" or the "**Receiver**") of the assets, undertakings and properties of Vandyk- Backyard Humberside Limited ("**VBHL**" or the "**Debtor**") for an Order:

1. validating service of the Notice of Motion and the Motion Record in the manner effected by the Receiver and dispensing with service thereof on any party other than the parties served;
2. approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") between the Receiver and Supertrin Commercial Properties Inc. (the "**Purchaser**") dated June 14,

2024 and appended to the First Report of the Receiver dated July 25, 2024 (the "**First Report**"),

3. vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");
4. sealing the Confidential Appendices 1 through 5 to the First Report until the earlier of the completion of the transaction or further Order of this Honourable Court;
5. approving the First Report and the conduct, activities and actions to date;
6. approving the distribution of the net proceeds of sale of the Purchased Assets and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the First Report;
7. authorizing the Receiver to make payment of any outstanding taxes and all costs to complete the administration of the receivership from the sale proceeds;
8. approving the Receiver's Interim Statement of Receipts and Disbursements;
9. approving the professional fees and disbursements of the Receiver, as well as authorizing the Receiver to make payment of such amounts from the sale proceeds; and,
10. approving the legal fees of SimpsonWigle LAW LLP, lawyers for the Receiver, as well as authorizing the Receiver to make payment of such amounts to SimpsonWigle LAW LLP from the sale proceeds,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, Home Trust Company, Kay Family Investments Inc. and Supertrin Commercial Properties Inc., no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Tanisha Lashley sworn July 26, 2024, filed:

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record in the manner effected by the Receiver be and is hereby validated and service thereof upon any party other than the parties served is hereby dispensed with.

2. **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.

3. **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 Osborne dated March 5, 2024; (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.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles 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.

5. **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.

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

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 AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. **THIS COURT ORDERS** that the Confidential Appendices 1 through 5 to the First Report be and are hereby sealed until the earlier of the completion of the Transaction or further Order of this Honourable Court.

10. **THIS COURT ORDERS** that the conduct, activities and actions of the Receiver, as set out in the First Report, are hereby approved.

11. **THIS COURT ORDERS** that the Receiver shall set aside the reserves as recommended in the First Report and shall make partial distribution of the net proceeds of the Transaction as follows:

- (1) To the City of Toronto in the amount of \$474,792.06 or such amount accrued at the closing of the Transaction for outstanding realty tax arrears;
- (2) To Home Trust Company in the amount of \$10,572,528.31 plus interest, or such other party as Home Trust might direct, for the repayment of the First Mortgage held by Home Trust; and,
- (3) To Kay Family Investments Inc., in the amount of \$1,267,416.69 plus interest and plus applicable taxed or agreed upon legal fees, or such other party as Kay Family might direct, for the repayment of the Second Mortgage held by Kay Family.

12. **THIS COURT ORDERS** that the Receiver is hereby authorized to make payment of any outstanding taxes and all costs to complete the administration of the receivership from the sale proceeds;

13. **THIS COURT ORDERS** that the Interim Receiver's Statement of Receipts and Disbursements, as set out in the First Report, is hereby approved.

14. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, SimpsonWigle LAW LLP, as set out in the First Report and the Fee Affidavits, are hereby approved and payment of same is hereby authorized.

15. **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-24-00715191-00CL

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B E T W E E N:

HOME TRUST COMPANY

Applicant

- and –

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the "**Court**") dated March 5, 2024, msi Spergel Inc. was appointed as the receiver (the "**Receiver**") of the undertakings, properties and assets of Vandyk – Backyard Humberside Limited (the "Debtor").

B. Pursuant to an Order of the Court dated August 14, 2024, the Court approved the agreement of purchase and sale made as of June 14, 2024 (the "**Sale Agreement**") between the Receiver and Supertrin Commercial Properties Inc. (the "**Purchaser**") and provided 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 sections 12 and 13 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.

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 Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**msi Spergel Inc., in its capacity as
Receiver of the undertakings, properties
and assets of Vandyk – Backyard
Humberside Limited, and not in its
personal capacity**

Per: _____

Name: Trevor B. Pringle, CFE, CIRP,
LIT

Title: Partner

Schedule B – Purchased Assets

Property known municipally as 10 Neighbourhood Lane, Toronto, Ontario, and legally described as:

PART OF BLOCKS B,C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 &18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2-8,10-14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2-8, 10-14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791), AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721;TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT18, 66R28992 AS IN EB156894; CITY OF TORONTO

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

INSTRUMENT NO. AT5182926	Kay Family Investments Inc. Charge registered on July 11, 2019 in the amount of \$2,000,000.
INSTRUMENT NO. AT5182927	Kay Family Investments Inc. Notice of Assignment of Rents registered on July 11, 2019.
INSTRUMENT NO. AT5416487	Home Trust Company Charge registered on April 28, 2020 in the amount of \$10,000,000.
INSTRUMENT NO. AT5416488	Home Trust Company Notice of Assignment of Rents registered on April 28, 2020.
INSTRUMENT NO. AT5416489	Postponement registered on April 28, 2020 from Kay Family Investments Inc. to Home Trust Company.
INSTRUMENT NO. AT5416490	Postponement registered on April 28, 2020 from 2233651 Ontario Limited to Home Trust Company.
INSTRUMENT NO. AT5416491	Notice registered on April 28, 2020 from Vandyk – Backyard Humberside Limited to Kay Family Investments Inc.
INSTRUMENT NO. AT5531340	Notice registered on September 29, 2020 from Vandyk – Backyard Humberside Limited, Vandyk – Backyard Queensview Limited and Vandyk – Backyard Kingsmill Limited
INSTRUMENT NO. AT6094356	Notice registered on May 31, 2022 from Vandyk – Backyard Humberside Limited to Home Trust Company
INSTRUMENT NO. AT6454977	Land Restriction registered on November 6, 2023
INSTRUMENT NO. AT6464046	Live Patrol Inc. Construction Lien registered on November 22, 2023 in the amount of \$9,473.
INSTRUMENT NO. AT6519357	Live Patrol Inc. Certificate registered on February 26, 2024.
INSTRUMENT NO. AT6528833	msi Spergel Inc. Court Order registered on March 11, 2024.

INSTRUMENT NO. AT5413469

Transfer from Vandyk - Shoppes of Stonegate Limited to Vandyk - Backyard Humberside Limited registered on April 22, 2020

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

(unaffected by the Vesting Order)

INSTRUMENT NO. EB156894	Transfer Easement registered on August 12, 1955
INSTRUMENT NO. EB160013	Agreement registered on October 24, 1955
INSTRUMENT NO. EB163037	Certificate registered as January 3, 1956
INSTRUMENT NO. EB177163	Agreement registered on November 19, 1956
INSTRUMENT NO. EB181933	Agreement registered on April 4, 1957
INSTRUMENT NO. EB186721	Bylaw registered on July 29, 1957
INSTRUMENT NO. EB188451	Agreement registered on September 6, 1957
INSTRUMENT NO. AT4242867	Notice registered on June 9, 2016
INSTRUMENT NO. 66R28992	Plan Reference registered on October 28, 2016
INSTRUMENT NO. AT4478657	Notice registered on October 28, 2016
INSTRUMENT NO. 66R29993	Plan Reference registered on April 13, 2018
INSTRUMENT NO. AT5200718	Land Registrar's Order registered on July 31, 2019
INSTRUMENT NO. AT5347788	Notice registered on January 22, 2020
INSTRUMENT NO. AT5347791	Transfer Release and Abandonment registered on January 22, 2020
INSTRUMENT NO. AT5531477	Transfer Release and Abandonment registered on September 29, 2020
INSTRUMENT NO. AT6402821	Haleemah Muhammad Charge registered on August 21, 2023 in the amount of \$1,150,000
INSTRUMENT NO. AT5261210	2233651 Ontario Limited Charge registered on October 11, 2019 in the amount of \$2,200,000.

HOME TRUST COMPANY
Applicant

-and- **VANDYK - BACKYARD HUMBERSIDE LIMITED**
Respondent

Court File No. CV-24-00715191-00CL

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PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver, msi Spergel Inc.