

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) WEDNESDAY, THE 8TH DAY
)
JUSTICE CHARLES HACKLAND) OF AUGUST, 2018.
)

B E T W E E N:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

730 HOLDINGS INC., 730 SUBWAY INC.,
730 ROADHOUSE INC. and 2362655 ONTARIO INC.

Respondents

AMENDED APPROVAL AND VESTING ORDER

THIS MOTION, made by Raymond Chabot Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertakings, properties and assets of the Respondents (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 2042066 Ontario Inc. (the "Purchaser") dated May 28, 2018 and appended as a Confidential (redacted) Appendix to the Report of the Receiver dated July 9, 2018 (the "Report"), and subsequently assigned by 2042066 Ontario Inc. to 2643868 Ontario Inc. (the "Purchaser") by way of assignment agreement dated August 1, 2018, and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day and on July 19, 2018 at the Courthouse, 161 Elgin Street, Ottawa, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the Affidavits of André Ducasse and Jannika Baird, sworn on July 10, 2018 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 Debtors' 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 Hainey dated November 21, 2017 or the Order of the Honourable Justice McEwen dated December 11, 2017; (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 Grenville (No. 15) 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 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 ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).



THE HONOURABLE MR. JUSTICE CHARLES HACKLAND

Schedule A – Form of Receiver’s Certificate

Court File No. CV-17-584016-00CL

**ONTARIO
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B E T W E E N:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

**730 HOLDINGS INC., 730 SUBWAY INC.,
730 ROADHOUSE INC. and 2362655 ONTARIO INC.**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the "**Court**") dated November 21, 2017, as amended by the Order of the Honourable Justice McEwen dated December 11, 2017, Raymond Chabot Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, properties and assets of the Respondents (the "**Debtors**").

B. Pursuant to ~~an~~ Orders of the Court dated July 19, 2018 and August 8, 2018, the Court approved the agreement of purchase and sale made as of May 28, 2018 (the "**Sale Agreement**") between the Receiver and 2042066 Ontario Inc. ~~(the "**Purchaser**")~~, which Sale Agreement was assigned by 2042066 Ontario Inc. to 2643868 Ontario Inc. (the "**Purchaser**") by way of assignment agreement dated August 1, 2018, and provided for the vesting in the Purchaser of the Debtors’ 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 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 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].

RAYMOND CHABOT INC., in its capacity as Receiver of the undertakings, properties and assets of THE RESPONDENTS, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

The Purchased Assets/Real Property include the following parcel of land:

1. PT LT 6 CON 2 EDWARDSBURGH AS IN PR89727, PT 1 15R8540 & PT 1, 15R9285 EXCEPT PT 1, 15R7354 & PT 2 & 3, 15R10628; S/T PR195859; S/T INTEREST IN PR37581; EDWARDSBURGH/CARDINAL. (PIN: 68150-0142 (LT) LRO #15)

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

The following Claims are to be deleted and expunged from title to the Real Property:

Instrument Number	Date of Registration	Description
GC33572	November 25, 2014	Charge in the amount of \$4,020,000 from 730 Holdings Inc. to Business Development Bank of Canada
GC35887	May 28, 2015	Charge in the amount of \$305,000 from 730 Holdings Inc. to Business Development Bank of Canada
GC33573	November 25, 2014	Notice of Assignment of Rents from 730 Holdings Inc. to Business Development Bank of Canada
GC34659	February 19, 2015	Notice of Lease from 730 Holdings Inc. to Bell Mobility Inc.
GC49753	November 23, 2017	Construction lien registered by Claybar Contracting Inc.
GC50280	January 3, 2018	Certificate registered by Claybar Contracting Inc.

The following registration is to be discharged from the Personal Property Act registry:

PPSA File and Registration Number	Date of Registration	Description
File #: 701804169 Registration #: 20141125 1024 1862 5745	November 26, 2014	"General assignment of rents as it relates to 2085 Shanly Road, Cardinal, Ontario"

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

(unaffected by the Vesting Order)

Any Instrument registered against title to the Real Property not listed in Schedule "C" hereto as of the date hereof is a permitted encumbrance.

BUSINESS DEVELOPMENT BANK OF CANADA
Applicant

- and -

730 HOLDINGS INC. et al.
Respondents

Court File No. CV-17-584016-00CL

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

AMENDED APPROVAL AND VESTING ORDER

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