

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 18TH DAY
)
JUSTICE CAVANAGH) OF JANUARY, 2022

BETWEEN:

**WAYGAR CAPITAL INC., AS AGENT FOR
NINEPOINT CANADIAN SENIOR DEBT MASTER FUND LP**

Applicant

- and-

**THE REHILL COMPANY LIMITED AND
SD PARKES HOLDINGS LTD.**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Rosen Goldberg Inc. (“**RGI**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties of The Rehill Company Limited (“**Rehill**”) and SD Parkes Holding Ltd. (collectively with Rehill, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof, for, *inter alia*: (a) an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Access Results Management Services Inc. dated October 8, 2021 and appended to the Second Report of the Receiver dated December 31, 2021 (the “**Report**”), and vesting in Access Self Storage Inc. (the “**Purchaser**”) all of Rehill’s right, title and interest in and to the real property known municipally as 921 High Street, Peterborough, Ontario and described legally in Schedule B hereto (the “**High Street Property**”), and (b) an order authorizing and directing the Receiver to make one or more distribution of funds to Waygar Capital Inc., as Agent for Ninepoint Canadian

Senior Debt Master Fund LP (“**Waygar**”) from the proceeds of sale of the Transaction, as described in the Report; was heard this day at Toronto via Zoom videoconference.

ON READING the Report and on hearing the submissions of counsel for the Receiver and Waygar:

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 High Street Property 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 Rehill’s right, title and interest in and to the High Street Property 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 Conway dated May 14, 2021; (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 High Street Property are hereby expunged and discharged as against the High Street Property.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Peterborough 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

High Street Property in fee simple, and is hereby directed to delete and expunge from title to the High Street 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 High Street Property shall stand in the place and stead of the High Street Property, 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 High Street Property with the same priority as they had with respect to the High Street Property immediately prior to the sale, as if the High Street Property 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 Rehill and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Rehill;

the vesting of the High Street Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Rehill and shall not be void or voidable by creditors of Rehill, 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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00649332-00CL

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Applicant

- and-

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Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (the “**Court**”) dated May 14, 2021, Rosen Goldberg Inc. (“**RGI**”) was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties of The Rehill Company Limited (“**Rehill**”) and SD Parkes Holding Ltd.

B. Pursuant to an Order of the Court dated January 18, 2022, the Court approved the agreement of purchase and sale made as of October 8, 2021 (the “**Sale Agreement**”) between the Receiver and Access Results Management Services Inc. and provided for the vesting in Access Self Storage Inc. (the “**Purchaser**”) of all of Rehill’s right, title and interest in and to the real property known municipally as 921 High Street, Peterborough, Ontario (the “**High Street Property**”), which vesting is to be effective with respect to the High Street Property 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 High Street Property; (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 High Street Property 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].

ROSEN GOLDBERG INC., in its capacity as court-appointed receiver and manager of all the assets, undertakings and properties of The Rehill Company Limited

Per: _____
Name:
Title:

Schedule B – High Street Property

PIN: 28070-0066 (LT)

Property Description: PT LTS 11 & 12 PL 11Q N MONAGHAN AS IN R547502;
PETERBOROUGH

Municipal Address: 921 High Street, Peterborough, Ontario

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

PIN: 28070-0066 (LT)

1. Charge registered on November 9, 2017, as Instrument No. PE280492 in favour of Waygar Capital Inc. in the principal amount of \$5,000,000.00.
2. Notice of Assignment of Rents- General registered on November 9, 2017, as Instrument No. PE280493, in favour of Waygar Capital Inc.
3. Notice re Charge Amending Agreement registered on July 2, 2020, as Instrument No. PE333774 in favour of Waygar Capital Inc.

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

(unaffected by the Vesting Order)

REG. NUM.	DATE	INSTRUMENT TYPE	PARTIES
R163427	1966/09/01	Bylaw	
R484184	1988/04/14	Agreement	The City of Peterborough
R634973	1997/04/04	Agreement	The City of Peterborough

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Court File No. CV-20-00649332-00CL

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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**Lawyers for Rosen Goldberg Inc., in its capacity as
Court-Appointed Receiver**