

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)
JUSTICE CONWAY)

TUESDAY, THE 8TH
DAY OF JUNE, 2021

BETWEEN:

KW CAPITAL PARTNERS LIMITED

Applicant

- and -

VERT INFRASTRUCTURE LTD.

Respondent

**APPROVAL AND VESTING ORDER
(Emprise Transaction Approval)**



THIS MOTION made by KSV Restructuring Inc. (previously KSV Kofman Inc.) (“**KSV**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of Vert Infrastructure Ltd. (“**Vert**”) for an Order granting the relief set out in the Notice of Motion dated May 31, 2021, including (i) the approval of the letter agreement (the “**Agreement**”) between the Receiver and Emprise Capital Corp. (“**Emprise**”) dated March 22, 2021 and the transactions provided therein (the “**Transaction**”), (ii) approving the vesting of all the Property (as defined in the Receivership Order) of Vert to KSV in trust, for the benefit of the existing creditors of Vert (the “**Trust**”), and (iii) a declaration that the administration of the Trust shall remain subject to these proceedings, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 pandemic.

Capitalized terms used herein but otherwise undefined shall have the respective meanings given to them in the Report (as defined below).

ON READING the Second Report of the Receiver dated May 31, 2021 (the “**Report**”) and on hearing the submissions of counsel for the Receiver and Emprise and no one appearing for any other person on the service list, although properly served:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that the Motion is properly returnable today and hereby dispenses with further service thereof.

TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the Agreement and the Transaction be and are hereby approved and that the execution of the 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 perform its obligations under the Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction.

3. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver to bring an application in the Supreme Court of British Columbia seeking an order (the “**BC Order**”) under the *Business Corporations Act* (British Columbia) as set out in the Report in order to effect the restructuring of Vert as contemplated in the Agreement.

VESTING

4. **THIS COURT ORDERS AND DECLARES** that upon the filing of the Receiver's certificate (the "**Receiver's Certificate**") substantially in the form attached as Schedule "A" hereto the following shall occur:

- (a) subject to subsection (e) and paragraph 5 below, all of the right, title and interest in and to the Property, shall vest absolutely and exclusively without recourse and subject to all existing encumbrances, in and to KSV Restructuring Inc. in trust (the "**Trustee**") for the purposes of continuing to administer the Property in the same manner and with the same powers, obligations and protections as the Receiver pursuant to the Receivership Order for the benefit of the existing creditors of Vert;
- (b) for the avoidance of doubt the Property vested in the Trust shall include any and all rights of Vert (i) to receive any refund of any taxes, duties, fees, premiums, assessments, reassessments, imposts, levies and other charges of any kind whatsoever imposed by any governmental authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, and including those levies on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance premiums, health insurance premiums and other government

pension plan premiums or contributions paid by Vert prior to the date of the delivery of the Receiver's Certificate and (ii) to receive any other third party warranties, guarantees, subsidies, refunds or credits incurred prior to the date of the delivery of the Receiver's Certificate (collectively, "**Refunds**"). After the date of delivery of the Receiver's Certificate, if Vert shall collect or receive any Refunds, all such Refunds shall be received by Vert as trustee for the Trust and shall be paid to the Trust forthwith;

- (c) subject to subsection (e) and paragraph 5 below, any person that, prior to the delivery of the Receiver's Certificate, had a right or claim against Vert of every nature and kind, including without limitation 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, contingent or otherwise (each a "**Claim**") shall no longer have such Claim against Vert, but will have an equivalent Claim against the Property to be administered by the Trust from and after the delivery of the Receiver's Certificate, with the same attributes, rights, nature and priority as they had immediately prior to their transfer in each case, and nothing in this Order limits, lessens, modifies (other than by change of debtor) or extinguishes the Claims of any person as against the Property to be administered by the Trust;

- (d) Subject to subsection (e) and paragraph 5 below, any and all security registrations against Vert in any applicable provincial personal property registry system, or any similar registrations in any applicable jurisdictions shall be and are hereby forever released and discharged as against Vert, and immediately after the delivery of the Receiver's Certificate shall attach to the Property vested in the Trust and maintain the same attributes, rights, nature, perfection and priority (including rights resulting from existing defaults of Vert) including, without limitation, their amount and their secured status as they had immediately before the delivery of the Receiver's Certificate, and no financing change statements in any applicable provincial personal property registry system, or any similar registrations in any applicable jurisdictions are required to reflect their transfer to and assumption by the Trust;
- (e) notwithstanding (a), (c) and (d) above, the funds advanced to Vert by Emprise pursuant to the Initial Loan and the Funding Loan shall vest in the Trust free and clear of and from any and all Claims, but shall remain subject to the Receiver's Charge (as defined in the Receivership Order); and
- (f) subject to paragraph 5 below, the commencement or prosecution, whether directly, indirectly, derivatively or otherwise of any demands, claims, actions, counterclaims, suits, judgements, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action against Vert channelled to and assumed by the Trust in respect of the Property shall be

permanently enjoined and barred and Vert shall be and is hereby forever released and discharged from any such Claims.

5. **THIS COURT ORDERS AND DECLARES**, that notwithstanding the foregoing, Vert shall remain liable for the Initial Loan and Funding Loan and that any and all of Vert's after acquired property shall be subject to the Working Capital Charge (as defined below).

RECEIVERSHIP DISCHARGE

6. **THIS COURT ORDERS** that upon the issuance of the Receiver's Certificate, Vert shall be deemed to cease to be a debtor in these receivership proceedings, and shall be deemed to be released from the purview of any Order of this Court granted in respect of these receivership proceedings, save and except for the present Order, the terms of which shall continue to apply in all respects.

7. **THIS COURT ORDERS** that upon the filing of the Receiver's Certificate, the Receiver shall be discharged as Receiver of the undertaking, property and assets of Vert, provided however that notwithstanding its discharge herein (a) KSV shall continue to administer the Property vested in the Trust in the same manner and with the same powers, obligations and protections as the Receiver pursuant to the Receivership Order for the benefit of the existing creditors of Vert, (b) KSV shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership and the Transaction herein, and (c) KSV shall continue to have the benefit of (i) the provisions of all Orders made in this proceeding, including the Receiver's Charge, as the same shall apply to the Property vested in the Trust, and (ii) all approvals,

protections and stays of proceedings in favour of KSV in its capacity as Receiver, or Trustee of the Trust as amended by this Order.

TRUST ADMINISTRATION

8. **THIS COURT ORDERS** that the Trust created hereby shall be named the “Vert Residual Asset Trust”.

9. **THIS COURT ORDERS AND DECLARES** that the administration of the Trust shall remain subject to the Court’s oversight and these proceedings, that the Receivership Order shall apply *mutatis mutandis* to the Trust, Property and Trustee and that the style of cause for these proceedings be changed to:

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**IN THE MATTER OF THE ADMINISTRATION OF THE
VERT RESIDUAL ASSET TRUST**

10. **THIS COURT ORDERS** that the Trustee shall be and is hereby authorized and directed to perform its functions and fulfill its obligations in accordance with the same obligations imposed on the Receiver pursuant to the Receivership Order, including without limitation to make any distributions or payments to KW Capital Partners Limited.

11. **THIS COURT ORDERS AND DECLARES** that the Trustee, in its capacity as Receiver or Trustee be and is hereby authorized to make additional distributions from time to time to KW Capital Partners Limited as the Trustee considers appropriate given

the availability of residual funds in the Trust from time to time net of reserves and holdbacks which the Trustee determines to be appropriate.

12. **THIS COURT ORDERS AND DECLARES** that the Trustee, its employees and representatives shall incur no liability as a result of acting in accordance with this Order, or otherwise administering the Trust, save and except for any gross negligence or wilful misconduct on the part of any such parties.

13. **THIS COURT ORDERS AND DECLARES** that no action lies against the Trustee, in its capacity as Receiver or Trustee, by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver and Trustee or belonging to the same group as the Receiver and Trustee shall benefit from the protection arising under the present paragraph.

WORKING CAPITAL CHARGE

14. **THIS COURT ORDERS AND DECLARES** that the Initial Loan, together with the Funding Loan, shall constitute indebtedness of Vert in favour of Emprise.

15. **THIS COURT ORDERS** that, upon the filing of the Receiver's Certificate and subsequent to the operation of paragraphs 4 to and including 7 herein, as security for all obligations of Vert resulting from the Initial Loan and the Funding Loan, Emprise is hereby granted a first ranking charge and security, up to a maximum amount of \$300,000 over Vert's after acquired assets, rights, undertakings and properties of every nature (the "**Working Capital Charge**").

APPROVAL OF ACTIVITIES

16. **THIS COURT ORDERS** that the Report and the activities of the Receiver set out therein are hereby approved provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

17. **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) (the “**BIA**”) in respect of Vert or the Property and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Vert or in respect of the Property,

the implementation of the Transaction, including the transfer of the Property to the Trust (i) shall be binding on any trustee in bankruptcy that may be appointed in respect of Vert, and shall not be void or voidable by creditors of Vert or the Trust, as applicable, (ii) shall not constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal, provincial or territorial legislation, and (iii) shall not constitute nor be deemed to be oppressive or unfairly prejudicial conduct by Vert or the Receiver pursuant to any applicable federal, provincial or territorial legislation.

18. **THIS COURT ORDERS AND DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and, without limitation to the foregoing, an order from the BC Court. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose.

19. **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.

Conway J.

SCHEDULE "A"

Court File No. CV-20-00642256-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

KW CAPITAL PARTNERS LIMITED

Applicant

- and -

VERT INFRASTRUCTURE LTD.

Respondent

RECEIVER CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 16, 2020, KSV Restructuring Inc. (previously KSV Kofman Inc.) was appointed as the receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties Vert Infrastructure Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor.

B. Pursuant to an Order of the Court dated [●], the Court approved the letter agreement of purchase and sale between the Receiver and Emprise Capital Corp. ("**Emprise**") dated March 22, 2021 (the "**Sale Agreement**"), and provided for the vesting of the Debtor's right, title and interest in and to the Property (as defined in the Receivership Order), in the Receiver in trust (the "**Trustee**") for the purposes of continuing to administer the Property in the same manner and with the same powers, obligations and protections as the Receiver pursuant to the Receivership Order for the benefit of the existing creditors of Vert which vesting is to be effective upon the delivery by the Receiver to Emprise of a certificate confirming (i) the payment by Emprise of the Funding Loan; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver or Emprise, 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. No appeal of the BC Order has been initiated and all appeal periods have expired; and
2. Emprise has advanced and the Receiver has received the Funding Loan pursuant to the Sale Agreement.

This Certificate was delivered by the Receiver at _____ on [●], 2021.

This Certificate may be executed by facsimile or other form of electronic transmission reproducing an original, which shall be deemed to be an original.

KSV RESTRUCTURING INC., in its capacity as receiver and manager of the undertaking, property and assets of Vert Infrastructure Ltd. and not in its personal capacity

By:

Name:

Title:

IN THE MATTER OF THE RECEIVERSHIP OF VERT INFRASTRUCTURE LTD.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)**

**APPROVAL AND VESTING ORDER
(Emprise Transaction Approval)**

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