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8  
9

HONORABLE TIMOTHY W. DORE  
Chapter 15  
Hearing Date: April 25, 2025\*  
Hearing Time: 9:30 a.m.  
Location: Courtroom 8106  
Response Date: April 22, 2025\*  
\*Motion to Shorten Time Pending

10 UNITED STATES BANKRUPTCY COURT  
11 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

12 In re  
13 VICINITY MOTOR CORP., *et al.*,<sup>1</sup>  
14 Debtors in a Foreign Proceeding.  
15  
16  
17  
18

Lead Case No. 24-12675-TWD

*Jointly Administered with:*  
Case No. 24-12677-TWD;  
Case No. 24-12678-TWD; and  
Case No. 24-12679-TWD

**MOTION TO APPROVE VESTING  
ORDER AND SALE OF CERTAIN  
ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES,  
AND OTHER INTERESTS**

19 **I. INTRODUCTION & RELIEF REQUESTED**

20 FTI Consulting Canada Inc., in its capacity as the receiver (the “Receiver”) appointed in  
21 the Canadian insolvency proceeding of Vicinity Motor Corp., Vicinity Motor (Bus) Corp., Vicinity  
22 Motor (Bus) USA Corp., and Vicinity Motor Property, LLC (collectively, the “Debtors”), *In the*  
23 *Matter of the Receivership of Vicinity Motor (Bus) Corp., et al.*, Supreme Court of British  
24 Columbia (the “Canadian Court”), Vancouver Registry No. S-247082 (the “Canadian

25 <sup>1</sup> The Debtors are Vicinity Motor Corp., Bankruptcy Case No. 24-12675, Vicinity Motor (Bus)  
26 Corp., Bankruptcy Case No. 24-12677, Vicinity Motor (Bus) USA Corp., Bankruptcy Case No.  
27 24-12678, and Vicinity Motor Property, LLC, Bankruptcy Case No. 24-12679.

MOTION TO APPROVE VESTING ORDER AND SALE OF CERTAIN  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND OTHER INTERESTS - 1

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1 Court of British Columbia to administer the Debtors' estates pursuant to the BIA and LEA. *See*  
2 ECF No. 1, Attachment No. 1 (the "Receiver Order"); *see also* Powell Decl. I ¶ 3, Ex. A.

3 **C. The Bankruptcy Proceeding.**

4 On October 24, 2024, in the United States Bankruptcy Court for the Western District of  
5 Washington (the "Bankruptcy Court"), the Receiver filed petitions seeking Chapter 15 recognition  
6 of the Canadian Proceeding as a foreign main proceeding for Vicinity and each of the other  
7 Debtors, commencing Chapter 15 bankruptcy cases for each of the Debtors (collectively, the  
8 "Bankruptcy Proceeding"). *See* ECF Nos. 1 and 3 (petition). On November 22, 2024, the Court  
9 entered an *Order Recognizing Foreign Main Proceeding and Granting Related Relief* (the  
10 "Recognition Order"). ECF No. 36.

11 **D. The Assets and Marketing Process.**

12 In January 2025, the Receiver began a marketing process (the "Marketing Process") to  
13 solicit *en bloc* and piecemeal offers for approximately 290 electric vehicles, intellectual property,  
14 and other miscellaneous assets across four locations (collectively, the "Assets").<sup>2</sup> Powell Decl. II,  
15 Ex. 1 at pp. 7-9. The marketed Assets include substantially all of the Debtors' personal property  
16 assets, including the Electric Vehicles, but the marketed Assets exclude the Debtors' real property  
17 assets, *i.e.* the Ferndale Facility, which the Receiver remains in the process of marketing and  
18 selling separately.

19 The Receiver is aware of two non-debtor entities that hold security interests in the Assets:  
20 Royal Bank of Canada ("RBC"), and Economic Development Canada ("EDC"). Powell Decl. II  
21 at ¶ 5.

22 In carrying out the Marketing Process, the Receiver, among other things: (i) compiled a  
23 list of potential purchasers based on market research, the Debtors previous customers, and parties  
24 who contacted the Receiver, which list included strategic buyers, auctioneers, and asset purchasers;

25  
26 <sup>2</sup> The subject Assets are specifically identified in "Schedule A" to the Auction Services Agreement.  
27 *See* Powell Decl. II, Ex. 1.B, Sch. A.

1 the opportunity of extracting their maximum value and will be completely responsible for the costs  
2 of advertising campaign; (v) the Auction Services Agreement is subject to approval by the  
3 Canadian Court in the Canadian Proceeding and the Bankruptcy Court in the Bankruptcy  
4 Proceeding; and (vi) the Assets will be sold on an “as is, where is” and “all sales are final” basis  
5 (collectively, the “Sale Transaction”). Powell Decl. II, Ex. 1 at pp. 9-10; *id.* Ex. 1.B (Auction  
6 Services Agreement).

7 **F. The Receiver’s Business Judgment.**

8 The Receiver is of the view that the Auction Services Agreement, and the Sale Transaction  
9 contemplated thereby, is the best proposal resulting from the Marketing Process, will result in the  
10 monetization of the Assets in a timely manner, and will protect the downside risk to the Receiver  
11 while maintaining the potential for upside realizations. Powell Decl. II, Ex. 1 at pp. 9-10. More  
12 specifically, the Receiver supports the Auction Services Agreement for the following reasons: (i)  
13 the Marketing process was fair and transparent and provided all participants with equal access to  
14 information and an opportunity to submit an offer or proposal; (ii) the NMG Amount provides the  
15 highest guaranteed net proceeds to the Receiver with an opportunity for additional recoveries if  
16 auction proceeds are at the high end of the anticipated range; (iii) the cost structure and other key  
17 terms of the Auction Services Agreement are commercially reasonable given the nature, locations,  
18 and condition of the Assets and based on the Receiver’s experience with auctioneers and  
19 liquidators in the context of insolvency or restructuring proceedings; (iv) the Receiver is satisfied  
20 that the Auctioneer has the requisite experience and is appropriately qualified to conduct the  
21 auction process contemplated by the Auction Services Agreement; (v) the Auction Services  
22 Agreement contains “as is, where is” provisions and has no closing conditions other than court  
23 approvals; and (vi) RBC supports the Sale Transaction contemplated by the Auction Services  
24 Agreement. *Id.*

25 **G. The Application and Vesting Order.**

26 On April 10, 2025, in the Canadian Proceeding, the Receiver filed a *Notice of Application*  
27 (the “Application”) and a proposed form of Vesting Order, along with the *First Report of the*  
MOTION TO APPROVE VESTING ORDER AND SALE OF CERTAIN  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND OTHER INTERESTS - 5

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1 in the United States free and clear of all claims, liens, and other competing interests. *See, e.g., In*  
2 *re Elpida Memory, Inc.*, 2012 WL 6090194 at \*1 (Bankr. D. Del. Nov. 20, 2012). While comity  
3 is always an important consideration throughout any Chapter 15 proceeding, the Bankruptcy Court  
4 ultimately has *in rem* jurisdiction over the Debtors' U.S.-based assets in this Bankruptcy  
5 Proceeding to approve the Auction Services Agreement and Sale Transaction contemplated therein  
6 pursuant to section 363. *Id.*

7 Upon recognition of a foreign main proceeding under Chapter 15, section 1520(a) of the  
8 Bankruptcy Code provides that certain provisions of the Bankruptcy Code automatically come into  
9 force, including procedures governing, the use, sale, lease, transfer, or encumbrance of the debtor's  
10 U.S. assets. 11 U.S.C. § 1520(a); *see also* Recognition Order at ¶¶ 21-22.

11 Section 1520(a)(2) provides that "sections 363, 549, and 552 apply to a transfer of an  
12 interest of the debtor in property that is within the territorial jurisdiction of the United States to the  
13 same extent that the sections would apply to property of an estate"; and section 1520(a)(3) gives a  
14 foreign representative in a recognized Chapter 15 case the power, unless the court orders otherwise,  
15 to "exercise the rights and powers of a [bankruptcy] trustee under and to the extent provided by  
16 sections 363 and 552." 11 U.S.C. § 1520(a)(2)-(3); *see also* Recognition Order at ¶¶ 21-22.

17 **B. The Auction Services Agreement and Sale Transaction Satisfy Section 363.**

18 Section 363(b) of the Bankruptcy Code provides that a bankruptcy trustee, after notice and  
19 a hearing, may use, sell, or lease property of the estate outside the ordinary course of the debtor's  
20 business. 11 U.S.C. § 363(b). Most courts apply a "business judgment" standard to a proposed  
21 use, sale, or lease of property under section 363(b), whereby "the bankruptcy court reviews the  
22 business judgment of a trustee... to determine independently whether the judgment is a reasonable  
23 one." Collier on Bankruptcy ¶ 363.02[4] (16th ed. 2024) (citing and discussing cases). Under  
24 section 363(f), the trustee may sell property pursuant to section 363(b) "free and clear of any  
25 interest in such property of an entity other than the estate" under certain specified circumstances,  
26 including when such entities consent. *See* 11 U.S.C. § 363(f)(2).

27 Section 363(b) of the Bankruptcy Code authorizes a sale of estate assets outside of the  
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ENCUMBRANCES, AND OTHER INTERESTS - 7

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1 Services Agreement and Sale Transaction will create a fair and equitable bidding process for third-  
2 party buyers to maximize the Assets' value for the Debtors' estates and creditors. The Auctioneer  
3 and any subsequent purchasers of the Assets in the Sale Transaction should qualify as good faith  
4 purchasers within the meaning of section 363(m) of the Bankruptcy Code, and should be entitled  
5 to all protections thereof.

6 3. Fair and Reasonable Purchase Price.

7 As discussed above, the Receiver conducted an extensive Marketing Process of the Assets,  
8 and the Auction Services Agreement and Sale Transaction present the highest and best offer under  
9 the circumstances of the Canadian Proceeding and the Bankruptcy Proceeding.

10 4. Accurate and Reasonable Notice.

11 Interested parties will receive notice of the Auction Services Agreement and Sale  
12 Transaction in the Canadian Proceeding, the Bankruptcy Proceeding, or both. Non-debtor entities  
13 with interests in the Assets—RBC and EDC—will receive notice of the Application in the  
14 Canadian Proceeding, and this Motion in the Bankruptcy Proceeding. The service lists for the  
15 Application and for this Motion are accurate and reasonable under the circumstances of the  
16 Canadian Proceeding and the Bankruptcy Proceeding.

17 In the Bankruptcy Proceeding, notice of this Motion, and the papers and pleadings related  
18 hereto, is being provided to: (i) the Auctioneer; (ii) all applicable federal, state, and local taxing  
19 and regulatory authorities of the Debtors or recording offices or any other governmental authorities  
20 that, as a result of the sale of the Assets, are reasonably expected by the Receiver to have claims,  
21 contingent or otherwise, in connection with the Debtors' ownership of the Assets or have any  
22 known interest in the relief requested by the Motion, including (A) the Internal Revenue Service,  
23 (B) the Federal Trade Commission, (C) the Committee on Foreign Investment in the US; (D) the  
24 Washington Licensing Authorities, (E) the City of Ferndale, Washington, and (F) each  
25 governmental agency that is an interested party with respect to the Sale Transaction; (iii) the  
26 Debtors' known secured creditors and lien holders, including all creditors or their counsel known  
27 to the Receiver to assert a lien (including any security interest), claim, right, interest, or  
MOTION TO APPROVE VESTING ORDER AND SALE OF CERTAIN  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND OTHER INTERESTS - 9

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1 VI. CONCLUSION

2 For these reasons, the Receiver respectfully requests that the Court enter the Receiver's  
3 proposed form of *Order Approving Vesting Order and Sale of Certain Assets Free and Clear of*  
4 *Liens, Claims, Encumbrances, and Other Interests* attached hereto as Exhibit A.

5 DATED: April 11, 2025

6 BALLARD SPAHR LLP

7  
8 By: /s/ James B. Zack

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10 James B. Zack, WSBA No. 48122

11 Todd Brannon, WSBA No. 59755

12 Attorneys for FTI Consulting Canada Inc.,  
13 Foreign Representative  
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MOTION TO APPROVE VESTING ORDER AND SALE OF CERTAIN  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND OTHER INTERESTS - 11

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10 UNITED STATES BANKRUPTCY COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE

13 In re

14 VICINITY MOTOR CORP., *et al.*,<sup>1</sup>

15 Debtor in a Foreign Proceeding.

Lead Case No. 24-12675-TWD

*Jointly Administered with:*  
Case No. 24-12677-TWD;  
Case No. 24-12678-TWD; and  
Case No. 24-12679-TWD

16  
17 **[PROPOSED]**  
18 **ORDER APPROVING VESTING**  
19 **ORDER AND SALE OF CERTAIN**  
**ASSETS FREE AND CLEAR OF**  
**LIENS, CLAIMS, ENCUMBRANCES,**  
**AND OTHER INTERESTS**

20  
21 This matter came before the Court on the *Motion to Approve Vesting Order and Sale of*  
22 *Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (the  
23 “Motion”)<sup>2</sup> filed by FTI Consulting Canada Inc., in its capacity as the receiver (the “Receiver”)  
24 appointed in the Canadian insolvency proceeding of Vicinity Motor Corp., Vicinity Motor (Bus)

25 <sup>1</sup> The Debtors are Vicinity Motor Corp., Bankruptcy Case No. 24-12675, Vicinity Motor (Bus)  
26 Corp., Bankruptcy Case No. 24-12677, Vicinity Motor (Bus) USA Corp., Bankruptcy Case No.  
24-12678, and Vicinity Motor Property, LLC, Bankruptcy Case No. 24-12679.

27 <sup>2</sup> Capitalized terms used but not defined in this Order have the meaning set forth in the Motion.

ORDER APPROVING VESTING ORDER AND  
SALE OF CERTAIN ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS - 1

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1 and lien holders, including all creditors or their counsel known to the Receiver to assert a lien  
2 (including any security interest), claim, right, interest, or encumbrance of record against all or any  
3 portion of the Assets; (iv) the United States Attorney for the Western District of Washington; (v)  
4 the Office of the United States Trustee for Region 18, Attn: Caitlyn Myerson; (vi) Royal Bank of  
5 Canada ("RBC"), through its counsel Dentons Canada LLP, Attn: John Sandrelli, Jordan Schultz,  
6 and Cassandra Federico, and Dentons US LLP, Attn: Sam J. Alberts and David Cook; (vii)  
7 Economic Development Canada, through its counsel Norton Rose Fulbright Canada LLP, Attn:  
8 Evan Cobb and Kieran Siddall; and (viii) all other parties that filed notices of appearance in the  
9 Chapter 15 cases, ((i)-(viii)) shall be collectively referred to herein as the "Notice Parties". The  
10 notices described above were good, sufficient, and appropriate under the circumstances, and no  
11 other notice is required.

12 F. The disclosures made by the Receiver concerning the Auction Services Agreement  
13 and the Vesting Order, the Sale Transaction contemplated therein, and the hearing on the Motion  
14 were good, complete, and adequate.

15 G. A reasonable opportunity to object or be heard with respect to the Motion and the  
16 relief requested therein has been afforded to all interested persons and entities.

17 H. The Receiver has full power and authority to consummate the Sale Transaction  
18 pursuant to the Auction Services Agreement and all other documents contemplated thereby, and  
19 no consents or approvals, other than those expressly provided for in the Auction Services  
20 Agreement or Vesting Order, are required for the Receiver to consummate the Sale Transaction.

21 I. Approval of the Auction Services Agreement and Vesting Order, and  
22 consummation of the Sale Transaction, are in the best interests of the Debtors' estates, their  
23 creditors, and other parties-in-interest.

24 J. The Receiver has demonstrated good, sufficient, and sound business purpose and  
25 justification and compelling circumstances for the Sale Transaction pursuant to section 363(b) of  
26 the Bankruptcy Code. Such business reasons include, without limitation, the following: (i) the  
27 Auction Services Agreement constitutes the highest or otherwise best offer for the Assets; (ii) the



1 terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent  
2 Conveyance Act, and section 548 of the Bankruptcy Code) and fair consideration under the  
3 Bankruptcy Code and applicable non-bankruptcy law. No other entity or group of entities has  
4 offered to purchase the Assets for greater economic value to the Debtors' estates than the Sale  
5 Transaction contemplated by the Auction Services Agreement and the Vesting Order. The  
6 Receiver's determination that the Auction Services Agreement constitutes the highest and best  
7 offer for the Assets constitutes a valid and sound exercise of the Receiver's business judgment.

8 N. The Auctioneer is not a mere continuation of any of the Debtors or their estates and  
9 there is no continuity of enterprise between the Auctioneer and any of the Debtors. The Auctioneer  
10 is not holding itself out to the public as a continuation of any of the Debtors. The Auctioneer is  
11 not a successor to any of the Debtors or their estates and the Sale Transaction does not amount to  
12 a consolidation, merger, or de facto merger of the Auctioneer, or any subsequent purchaser of the  
13 Assets, and any of the Debtors.

14 O. The Debtors are not debtors under Chapter 11 of the Bankruptcy Code. The Sale  
15 Transaction of the Assets outside a Chapter 11 plan pursuant to the Auction Services Agreement  
16 neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates  
17 the terms of a Chapter 11 plan of the Debtors. The Auction Services Agreement and Vesting  
18 Order, and the Sale Transaction contemplated therein, do not constitute a sub rosa plan.

19 P. The Auctioneer, and any subsequent purchasers of the Assets, has not agreed to  
20 assume and shall have no obligations with respect to any liabilities of the Debtors or their  
21 subsidiaries or affiliates.

22 Q. The Auctioneer is not and will not be liable to any agent, broker, person, or firm  
23 acting or purporting to act on behalf of either the Receiver or the Auctioneer for any commission,  
24 broker's fee, or finder's fee respecting the Sale Transaction, except as otherwise set forth in the  
25 Auction Services Agreement.

26 R. The Auction Services Agreement was not entered into for the purpose of hindering,  
27 delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United

1 liquidated or unliquidated, arising or imposed by agreement, understanding, law, equity, statute,  
2 or otherwise and whether arising prior to, on, or after the Petition Date, because one or more of  
3 the standards set forth in section 363(f)(1) – (5) has been satisfied with regard to each such lien,  
4 claim, and interest; with the liens, claims and interests of RBC and any other creditor holding valid  
5 liens attaching to the net cash proceeds of the Sale Transaction in the order of their priority, with  
6 the same validity, force, and effect which they now have as against the Assets, subject to any  
7 claims and defenses, setoffs, or rights of recoupment the Debtors may possess with respect thereto;  
8 *provided* the Receiver on behalf of the Debtors' estates agree that the liens, claims and interests of  
9 RBC are valid, enforceable and not subject to any claims and defenses, setoffs, or rights of  
10 recoupment. Those non-debtor parties with liens, claims, and interests in or with respect to the  
11 Assets who did not object, or who withdrew their objections to the Sale Transaction or the Motion  
12 are deemed to have consented to the sale of the Assets free and clear of those non-debtor parties'  
13 liens, claims and interests in the Assets pursuant to section 363(f)(2) of the Bankruptcy Code.  
14 Those non-debtor parties with liens, claims, and interests in or with respect to the Assets who  
15 objected to the Motion, but who did not withdraw any such objection, can be compelled to accept  
16 a monetary satisfaction of their liens, claims, or interests within the meaning of Section 363(f)(5)  
17 of the Bankruptcy Code.

18 U. If the Sale Transaction were not free and clear of all liens, claims, and interests, or  
19 if the Auctioneer or any subsequent purchaser of the Assets would, or in the future could, be liable  
20 for any of the liens, claims, and interests, the Auctioneer would not have entered into the Auction  
21 Services Agreement and would not consummate the Sale Transaction, thus adversely affecting the  
22 Debtors, their estates, and their creditors.

23 V. The Sale Transaction will not include the transfer of Personally Identifiable  
24 Information, as defined in section 101(41A) of the Bankruptcy Code.

25 W. The transfer of the Assets to the Auctioneer and any subsequent purchasers of the  
26 Assets (a) does not constitute an avoidable transfer under the Bankruptcy Code or under other  
27 applicable bankruptcy or non-bankruptcy law and (b) does not and will not subject the Auctioneer

1           7. Pursuant to section 363(b) of the Bankruptcy Code, the Receiver and Auctioneer  
2 are authorized to consummate the Sale Transaction pursuant to and in accordance with the terms  
3 and conditions of the Auction Services Agreement and the Vesting Order, and the Receiver shall  
4 at all times act in accordance with the terms thereof.

5           8. The Receiver is authorized to execute and deliver, and empowered to perform  
6 under, consummate, and implement the Auction Services Agreement and the Vesting Order,  
7 together with all additional instruments and documents that may be reasonably necessary,  
8 convenient, or desirable to implement the Auction Services Agreement and consummate the Sale  
9 Transaction pursuant thereto and effectuate the provisions of the Vesting Order and this Order and  
10 the transactions approved therein, and to take all further actions as may be requested by the  
11 Auctioneer for the purpose of assigning, transferring, granting, conveying, and conferring to the  
12 Auctioneer or any subsequent purchaser of the Assets or reducing to possession, the Assets, or as  
13 may be necessary or appropriate to the performance of the obligations as contemplated by the  
14 Auction Services Agreement and the Vesting Order.

15           9. The consideration provided by the Auctioneer or any subsequent purchaser of the  
16 Assets to the Receiver pursuant to the Auction Services Agreement for the Assets constitutes  
17 reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform  
18 Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and under the laws of the United  
19 States, any state, territory, possession, or the District of Columbia.

20           10. This Order shall be binding in all respects upon (a) the Debtors, (b) their estates,  
21 (c) all creditors, (d) all holders of liens, claims, and interests whether known or unknown against  
22 or on all or any portion of the Assets, (e) the Auctioneer or any subsequent purchaser of the Assets,  
23 and all of their respective successors and assigns, (f) the Assets, and (g) the Receiver. This Order,  
24 the Vesting Order, and the Auction Services Agreement shall inure to the benefit of the Receiver,  
25 the Debtors and their estates and creditors, the Auctioneer or any subsequent purchaser of the  
26 Assets, and the respective successors and assigns of each of the foregoing.

27  
ORDER APPROVING VESTING ORDER AND  
SALE OF CERTAIN ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS - 9

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1 assigns. Following the closing of the Sale Transaction, no holder of a lien, claim, and interest shall  
2 interfere with the Auctioneer's or any subsequent purchaser of the Assets' title to or use and  
3 enjoyment of the Assets based on or related to such lien, claim, and interest or any actions that the  
4 Receiver or Debtors have taken or may take in these Chapter 15 cases. Effective upon the closing  
5 of the Sale Transaction, the Auctioneer or any subsequent purchaser of the Assets shall have no  
6 liability for any claims (as defined in section 101(5) of the Bankruptcy Code) against the Debtors  
7 or their estates.

8 15. The Receiver may sell the Assets free and clear of all liens, claims, and interests  
9 whatsoever against the Debtors, their estates, or any of the Assets because, in each case, one or  
10 more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.  
11 Those holders of liens, claims, and interests against the Debtors, their estates, or any of the Assets  
12 who did not object, or who withdrew their objections to the Sale Transaction or the Motion are  
13 deemed to have consented pursuant to 363(f)(2) of the Bankruptcy Code.

14 16. The transfer of the Assets to the Auctioneer or any subsequent purchaser of the  
15 Assets pursuant to the Auction Services Agreement and the Vesting Order, and the Sale  
16 Transaction contemplated therein, constitutes a legal, valid, and effective transfer of the Assets,  
17 and shall vest the Auctioneer or any subsequent purchaser of the Assets with all right, title, and  
18 interest of the Debtors in and to the Assets.

19 17. Any and all valid and perfected liens, claims, and interests in the Assets shall attach  
20 to the net proceeds of the Assets immediately upon receipt of such proceeds by the Debtors (or  
21 any party acting on the Debtors' behalf) in order of priority, and with the same validity, force, and  
22 effect which they now have against such Assets, subject to any rights, claims, and defenses the  
23 Debtors, the Debtors' estates, or the Receiver, as applicable, may possess with respect thereto, in  
24 addition to any limitations on the use of such proceeds pursuant to any provision of this Order or  
25 the Vesting Order; *provided* the Receiver on behalf of the Debtors' estates agree that the liens,  
26 claims and interests of RBC are valid, enforceable and not subject to any claims and defenses,  
27

1           20. All persons and entities are hereby forever prohibited and enjoined from taking any  
2 action that would adversely affect or interfere with the ability of the Receiver or any of the Debtors  
3 to sell and transfer the Assets to the Auctioneer or any subsequent purchaser of the Assets in  
4 accordance with the terms of the Auction Services Agreement, the Vesting Order, and this Order.

5           21. The Auction is giving substantial consideration under the Auction Services  
6 Agreement for the benefit of the Debtors, their estates, and creditors. The consideration given by  
7 the Auctioneer, and any subsequent purchaser of the Assets, shall constitute valid and valuable  
8 consideration for the releases of any potential liens, claims, and interests pursuant to this Order  
9 and the Vesting Order, which releases shall be deemed to have been given in favor of the  
10 Auctioneer or any subsequent purchaser of the Assets by all holders of all liens, claims, and  
11 interests against any of the Debtors or any of the Assets. The consideration provided by the  
12 Auctioneer for the Assets under the Auction Services Agreement is fair and reasonable and  
13 accordingly the purchase by the Auctioneer, or any subsequent purchaser of the Assets, may not  
14 be avoided under section 363(n) of the Bankruptcy Code.

15           22. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule  
16 6006 or any applicable provisions of the Local Bankruptcy Rules, this Order shall not be stayed  
17 for 14 days after the entry hereof, but shall be effective and enforceable immediately upon entry.  
18 Time is of the essence in approving the Sale Transaction, and the Receiver and the Auctioneer  
19 intend to consummate the Sale Transaction as soon as practicable.

20           23. Without limiting the other terms of this Order, or the Vesting Order, prior to or  
21 upon the closing of the Sale Transaction, each of the Debtors' creditors is authorized and directed  
22 to execute such documents and take all other actions as may be necessary to release their liens,  
23 claims, and interests, if any, in the Assets as such liens, claims, and interests may have been  
24 recorded or may otherwise exist.

25           24. This Order and the Vesting Order (a) shall be effective as a determination that, upon  
26 the closing of the Sale Transaction, all liens, claims, and interests existing with respect to the  
27 Assets prior to the Sale Transaction have been unconditionally released, discharged, and

ORDER APPROVING VESTING ORDER AND  
SALE OF CERTAIN ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS - 13

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1 Auctioneer or any subsequent purchaser of the Assets in accordance with the terms of this Order,  
2 the Vesting Order, and the Auction Services Agreement.

3 28. This Court hereby retains jurisdiction to enforce and implement the terms and  
4 provisions of this Order; *provided, however*, the Canadian Proceeding shall hold jurisdiction over  
5 the Vesting Order and the Auction Services Agreement, including all amendments thereto, any  
6 waivers and consents thereunder, and of each of the agreements executed in connection therewith  
7 in all respects including, but not limited to, jurisdiction to (a) compel delivery of the Assets to the  
8 Auctioneer or any subsequent purchaser of the Assets in accordance with the terms of the Auction  
9 Services Agreement and the Vesting Order, (b) resolve any dispute, controversy, or claim arising  
10 under or related to the Auction Services Agreement, or the breach thereof and (c) interpret,  
11 implement, and enforce the provisions of the Vesting Order and resolve any disputes related  
12 thereto.

13 29. The transactions contemplated by the Auction Services Agreement are undertaken  
14 by the Auctioneer in good faith, as that term is used in section 363(m) of the Bankruptcy Code.  
15 The Auctioneer, or any subsequent purchaser of the Assets, is a good faith purchaser of the Assets  
16 and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.  
17 Accordingly, any reversal or modification on appeal of the authorization provided herein to  
18 consummate the Sale Transaction shall not affect the validity of the Sale Transaction to the  
19 Auctioneer or any subsequent purchaser of the Assets.

20 30. The terms and provisions of the Auction Services Agreement, the Vesting Order,  
21 and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Receiver,  
22 the Debtors, the Debtors' estates and creditors, the Auctioneer and any subsequent purchaser of  
23 the Assets, and any of such parties' respective affiliates, designees, successors, and assigns, and  
24 shall be binding in all respects upon all of the Debtors' creditors, all prospective buyers for some  
25 or all of the Assets, and all persons and entities receiving notice of the Motion and the hearing  
26 thereon notwithstanding any subsequent appointment of any examiner(s) or receiver(s) under any  
27 Chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise

**EXHIBIT A**

**VESTING ORDER**

[TO BE SUPPLEMENTED UPON ENTRY IN THE CANADIAN PROCEEDING]

ORDER APPROVING VESTING ORDER AND  
SALE OF CERTAIN ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS - 17

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