

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MELVYN EISEN, TRUSTEE

Applicant

- and -

DIAM DANFORTH PROPERTY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

APPLICATION RECORD
(returnable May 4, 2020)

May 1, 2020

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TAB 1

Court File No. CV-20-00640347-00CL

**ONTARIO
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NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Monday May 4, 2020 at 10:00 am by Zoom videoconference, details of which may be obtained from counsel for the Applicant..

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: ~~April~~ *May 1st*, 2020

Issued by *Ray Williams* **Ray Williams, Registrar**

Local registrar
330 University Ave., 9th Floor
Toronto, ON M5G 1R7.

.....
TO: THE ATTACHED SERVICE LIST

APPLICATION

1. The Applicant, Melvyn Eisen, makes application for:
 - a) if necessary, an Order abridging the time for service and filing of this Notice of Application and the Application Record, validating service effected to date, and an order dispensing with service thereof on any party other than the persons served;
 - b) an Order substantially in the form attached as **Schedule "A"** appointing Rosen Goldberg Inc. as receiver and manager (in such capacity, the "**Receiver**") without security of certain real property and related assets of the Respondent, DIAM Danforth Property Inc. (the "**Debtor**"); and
 - c) such further and other relief as this Honourable Court deems just.
2. The grounds for the application are:

BACKGROUND

- a) The Debtor is a real estate development company and is the registered owner of the property municipally known at 2359 Danforth Avenue, Toronto, Ontario M4C 1K8 (the "**Land**");
- b) The Land is a parcel of vacant land on which the Debtor intended to develop and construct a proposed condominium project (the "**Project**");
- c) Currently there is no construction or development work underway, in fact, the Project has been stalled as a 3-storey open-sky excavation with temporary shoring since January 2019;
- d) The Applicant, Melvyn Eisen, is a secured creditor of the Debtor who advanced \$11.5 million to the Respondent pursuant to a commitment letter dated January 16, 2019 (the "**Commitment Letter**") which is secured by,

among other things, a real property mortgage (the “**Mortgage**”) and a general security agreement (“**GSA**”) from the Respondent;

- e) By virtue of postponements, the Mortgage ranks first on the Land with the possible exception of two construction liens for holdback deficiencies;
- f) As of April 23, 2020, the sum of \$11,666,985.75 (total of principal and interest) remains due and unpaid to the Applicant;

The Defaults

- g) Pursuant to the terms of the Commitment Letter and Mortgage, as of April 1, 2020 the Debtor was in default to pay \$11, 662,601.96 which was the first payment due as the first year’s worth of interest was pre-paid;
- h) On or about April 16, 2020 the Applicant delivered a 30-day demand for payment and a notice of sale under charge/mortgage, expiring on May 26, 2020;
- i) On or about April 23, 2020, counsel for the Applicant delivered a demand for repayment of its loan to the Debtor and delivered a Notice of Intention to Enforce Security, for which the Debtor has consented to enforcement sooner than the statutory 10 day period;
- j) The Debtor also owes, as at April 27, 2020, \$104,671.02 in taxes to the City of Toronto, which constitutes an event of default under the GSA;

The Project Status

- k) In addition to the Debtor’s defaults noted above, the Project site is also currently subject to an Order to Remedy Unsafe Building pursuant to subsection 15.9(4) of the *Building Code Act*, 1993 (the “**Order**”) which was issued by the City of Toronto, on or about April 17, 2020, further to the inspection and recommendation of the engineer for the Project, Mr. Michael Porco of Grounded Engineering (the “**Engineer**”);

- l) The Order issued by the City sets out:
- a. that “*an Inspection on or about Apr 17, 2020 at the above referenced address found the building to be in an unsafe condition as defined in Sentence 15.9 (2) of the Building Code Act, 1992*”; and
 - b. that the Respondent is “*hereby ordered to take the required actions itemized below by the dates listed below, or by May 1, 2020*”, followed by the table reproduced below:

Description and location	Required action and compliance date
<p>The attached engineering report from Michael Poreo of Grounded Engineering regarding the Shoring System Serviceability Failure & Public Safety Concern dated April 15, 2020. The temporary shoring system that is well past its service life after May 1, 2020 and this poses a significant public safety concern.</p>	<p>You are required to do the remedial action as prescribed by the engineer in the said report. The action should be supervised by a Geotechnical Engineer who should issue a report when it is completed.</p> <p>P.S. In light of the COVID-19 pandemic, the work described above falls under O.Reg. 82/20 'Closure of Places of Non-Essential Businesses' as amended on April 3, 2020. Specifically, clause 31 of the revised Schedule 2 of the Updated Emergency Order, which reads: 31. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure public safety.</p>

- m) It is the Engineer’s opinion that the Project excavation poses a public safety concern and requires, among other things, the implementation of a certain shoring remediation plan and to carry on with construction of the below-grade structure by no later than May 1, 2020, failing which an emergency backfilling order could be issued;
- n) It is also the Engineer’s opinion that in light of the COVID-19 pandemic, the work described under the Work Order would be allowable as it falls

under the Ontario Regulation 82/20 “Closure of Places of Non-Essential Businesses” as amended on April 3, 2020, specifically clause 31 of revised Schedule 2 which reads “31. *Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure public safety*”;

- o) The Debtor has not taken any steps towards compliance with the Order;
- p) Absent steps that are satisfactory to the City and the Engineer, the City intends to issue a contract for the backfilling of the excavation on the Land;

Need for a Receiver

- q) Should an emergency backfilling order be issued, the Respondents security will be prejudiced by the City’s costs taking priority and the excavation will need to be completed again for the Project to continue, thus reducing the value of the Project and the Land;
 - r) The interests of all stakeholders, including subordinate creditors, would also be affected in that manner;
 - s) Rosen Goldberg Inc. has consented to act as Receiver;
 - t) Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
 - u) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended; and
 - v) such further and other grounds as counsel may advise and this Honourable Court accepts.
3. The following documentary evidence will be used at the hearing of the application:
- a) the affidavit of Melvyn Eisen;

- b) the consent of Rosen Goldberg Inc. to act as Receiver; and
- c) such other documentary evidence as this Honourable Court may accept.

~~April 30, 2020~~

MAY 01 2020

GOLDMAN SLOAN NASH & HABER LLP

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Lawyers for the Applicant, Melvyn Eisen, Trustee

TAB A

Court File No. CV-20-00640347-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 4TH

JUSTICE KOEHNEN

)

DAY OF MAY, 2020

)

MELVYN EISEN, TRUSTEE

Applicant

- and -

DIAM DANFORTH PROPERTY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

**ORDER
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Rosen Goldberg Inc. as receiver (in such capacities, the “**Receiver**”) without security, of the real property known as 2359 Danforth Avenue, Toronto, ON M4C 1K8, and bearing parcel identification number 21014-1184 (LT) in the Land Titles Division of the Land Registry Office of Toronto (No. 066) (hereinafter referred to as the “**Real Property**”) and all other property, assets, undertakings of DIAM Danforth Property Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Melvyn Eisen sworn May 1, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, and all other counsel listed on the counsel slip, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of • sworn • , 2020 and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00 provided that the aggregate consideration for all such transactions does not exceed \$500,000.00 and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. **THIS COURT ORDERS** that, without further Court Order, the Receiver shall not take possession of the Real Property, and shall not be deemed to have done so, by exercising any of the powers conferred in paragraph 3, including without limitation the retainer if necessary of one or more contractors to enter on to the Real Property and provide materials or services to the Real Property.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and

limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in

favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.rosengoldberg.comcurrent-files.php .

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last

shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **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.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Rosen Goldberg Inc., the receiver (the "**Receiver**") of certain real property registered on title as being owned by DIAM Danforth Property Inc. (the "**Debtor**") and that is listed on Schedule "A" hereto (collectively, the "**Real Property**") and all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to the Real Property (together with the Real Property, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the fourth day of May, 2020 (the "**Order**") made in an action having Court file number CV-20-00640347-00CL has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

ROSEN GOLDBERG INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT* BETWEEN MELVYN EISEN, TRUSTEE, APPLICANT, AND DIAM DANFORTH PROPERTY INC., RESPONDENT

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

ORDER
(appointing Receiver)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (Student-at-Law)

Lawyers for the Applicant, Melvyn Eisen, Trustee

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*
BETWEEN MELVYN EISEN, TRUSTEE, APPLICANT, AND DIAM
DANFORTH PROPERTY INC., RESPONDENT

Court File No. CV-20-00640347-0066

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced in TORONTO

NOTICE OF APPLICATION

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (Student-at-Law)

Lawyers for the Applicant, Melvyn Eisen, Trustee

TAB 2

Court File No. CV-20-00640347-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MELVYN EISEN, TRUSTEE

Applicant

- and -

DIAM DANFORTH PROPERTY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

**AFFIDAVIT OF MELVYN EISEN
(sworn May 1, 2020)**

I, Melvyn Eisen, of the City of Toronto, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I have knowledge of the matters referred to in this affidavit because I am the Applicant as trustee of the investors in a mortgage in favour of the Respondent (among others). Where this affidavit is based on information and belief, I have stated the source of that information and believe it to be true.
2. I am a lawyer licensed to practice in the Province of Ontario. I carry on the business of, among other things, mortgage lending on behalf of clients in syndicated investments, in which I act as trustee for the investors.

3. In that capacity, I am a secured creditor of the Respondent.
4. This affidavit is sworn in support of an application for an order appointing Rosen Goldberg Inc. (“**Rosen Goldberg**”) as receiver and manager (the “**Receiver**”) of the property, assets and undertakings of the Respondent (the “**Property**”), without security, pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and s. 101 of the *Courts of Justice Act*.

I. OVERVIEW

5. I am the Respondent’s first ranking secured creditor on what I understand to be its only asset of high value, a piece of land and a proposed condominium project at 2359 Danforth Avenue. I have recently learned that for months the project has been stalled as an excavation with temporary shoring.
6. The sum of \$11,666,985.75 (as of April 23, 2020) is due and unpaid to me by the Respondent. On April 23, 2020, my counsel sent the Respondent a demand and a Notice of Intention to Enforce Security pursuant to BIA s. 244(1). On April 24, 2020, the Respondent consented to immediate enforcement.
7. In addition, on April 15, 2020, an engineer for the project wrote, with a copy to the Respondent, that he believes the excavation to be a public safety concern. On April 17, 2020, a work order from the City of Toronto imposed remedial measures to be effected by May 1, 2020, failing which an emergency backfilling order could be issued. The engineer in question has only extended the deadline he suggested to the City to end of the day on May 4, 2020.
8. The Respondent has not begun and likely will not begin work on the remedial measures in time to deal with the City’s work order, or even at all.
9. If the backfilling occurs, I am advised by counsel that my security will be prejudiced by both the costs of the City’s work taking priority after being added to municipal taxes and the reduction in value because excavation will have to be done

again for a project to continue. The interests of all stakeholders including subordinate creditors would also be affected in that manner.

10. If appointed, at the first stage of the receivership, I understand that the Receiver intends to urgently review how to respond to the work order, which may include either contracting certain work to address it, or pursuing a sale of the property to a purchaser who would then address that.
11. I believe it just and convenient and in the best interest of all stakeholders in the project, including the Respondent's creditors and the City, to appoint the Receiver. Further, a receivership is a fair and expeditious way to address possible public safety concerns.
12. In light of the above this application is urgent.

II. BACKGROUND

13. The Respondent is an Ontario business corporation incorporated on November 20, 2014 and Mr. Moninder S. Khudal is its sole director and officer, as appears from the **Exhibit "A"** corporation profile report.
14. To my knowledge, the Respondent's only asset of value is the land located at 2359 Danforth Avenue, Toronto (the "**Land**"), formally described in the **Exhibit "B"** parcel register dated April 16, 2020 and the planned condominium project thereon (the "**Project**").
15. On January 16, 2019, I agreed to lend \$11,500,000 to the Respondent, as more fully appears from the **Exhibit "C"** commitment letter (the "**Commitment Letter**"). I was told by Mr. Khudal that the purpose of the loan was in part to redeem a mortgage owing to First National, which was at that time in default and was the subject of an earlier receivership application.

16. The Respondent granted me real property and personal property security as follows:
- a. On February 17, 2019, the Respondent granted me a personal property security interest in the Property, as more fully appears from the **Exhibit “D”** general security agreement (the “**GSA**”). On March 4, 2019, I registered this security interest with the registrar of personal property security, as more fully appears from the **Exhibit “E”** *Personal Property Security Act* (“**PPSA**”) search report (see file number 748765341).
 - b. On February 29, 2019, the Respondent granted me (as to 99.56%) and the Community Trust Company (as to 0.44%) a mortgage (the “**Mortgage**”) in the Land, as more fully appears from the **Exhibit “F”** land register extract (charge/mortgage) and Exhibit “B” (parcel register). The loaned funds were concurrently extended in a single advance. On April 22, 2020, the Community Trust Company transferred me its 0.44% of the Mortgage, as more fully appears from the **Exhibit “G”** land register extract (transfer of charge).
17. By virtue of postponements, the Mortgage ranks first on the Land with the possible exception of construction liens for holdback deficiencies, as more fully appears from Exhibit “B” (parcel register).
18. To my knowledge, the Project is stalled as a 3-storey open-sky excavation with temporary shoring since January 2019.

III. LETTER TO TORONTO BUILDINGS AND CITY WORK ORDER

19. On April 15, 2020, an engineer for the Project, Mr. Michael Porco, copied Mr. Khudal on a letter, a copy of which is attached as **Exhibit “H”**. The letter sets out:
- a. the engineer’s opinion that the Project excavation poses a public safety concern;

- b. his recommendation that this *“be addressed immediately, as follows: implement the recommendations of the shoring remediation plan and carry on with construction of the below-grade structure (i.e. continue placement of concrete foundations, subfloor drainage system, and concrete slabs/walls/columns by **no later than May 1, 2020**; and complete construction of the P1 suspended slab by **no later than 90 days thereafter, or by July 30, 2020**”* (bold in original);
 - c. the engineer’s opinion that such work could be performed during the COVID-19 pandemic due to being captured by s. 31 of Schedule 2 of the Ontario Regulation number 82/20, *Order under subsection 7.0.2(4) – Closure of Places of Non-Essential Business*;
 - d. that *“should construction activities fail to commence in a significant way by May 1, 2020, in [the engineer’s] professional opinion the excavation (sic), a backfilling operation must be undertaken to berm the site up to the equivalent to P1 elevation by no later than July 30, 2020”*; and
 - e. that *“should [the engineer] not receive confirmation from the project team that construction activities are re-commencing by May 1, 2020, [the engineer] will recommend that Toronto Buildings issues (sic) an emergency order to demand the immediate backfilling of the site to reinstate the pre-existing grades”*.
20. The Respondent provided me with a copy of this letter on Saturday April 18, 2020.
21. On April 17, 2020, Mr. Jackson Kwok, Building Specialist at the City of Toronto (the “**City**”) issued to the Respondent an Order to Remedy Unsafe Building Pursuant to Subsection 15.9(4) of the *Building Code Act, 1992* bearing

number 20 134814 UNS 00 VI, applicable to 2359 Danforth Avenue (the “**Work Order**”). A copy of the Work Order is attached as **Exhibit “I”**. It sets out:

- a. that “*an Inspection on or about Apr 17, 2020 at the above referenced address found the building to be in an unsafe condition as defined in Sentence 15.9 (2) of the Building Code Act, 1992*”; and
- b. that the Respondent is “*hereby ordered to take the required actions itemized below by the dates listed below, or by May 1, 2020*”, followed by the table reproduced below.

Description and location	Required action and compliance date
<p>The attached engineering report from Michael Porco of Grounded Engineering regarding the Shoring System Serviceability Failure & Public Safety Concern dated April 15, 2020. The temporary shoring system that is well past its service life after May 1, 2020 and this poses a significant public safety concern.</p>	<p>You are required to do the remedial action as prescribed by the engineer in the said report. The action should be supervised by a Geotechnical Engineer who should issue a report when it is completed.</p> <p>P.S. In light of the COVID-19 pandemic, the work described above falls under O.Reg. 82/20 'Closure of Places of Non-Essential Businesses', as amended on April 3, 2020. Specifically, clause 31 of the revised Schedule 2 of the Updated Emergency Order, which reads: 31. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure public safety.</p>

22. I saw a photo of the Order on or about April 23, 2020 and obtained a full copy of the Order on April 28, 2020.
23. To my knowledge the Respondent has done nothing towards compliance with the Work Order. I believe the Respondent cannot effect the requested measures within the time imposed, if at all.
24. On or around April 22, 2020, I instructed my lawyers Goldman Sloan Nash & Haber LLP (“**GSNH**”) (Mr. Brendan Bissell) to communicate with Mr. Porco, Mr. Kwok, or any other person responsible at Toronto Buildings and the City, to

discuss any possibility to extend the May 1, 2020 deadline and advise of my intention to seek the appointment of the Receiver to handle the matter, including commissioning any necessary work, and possibly an eventual sale of the Land and Project in which the purchaser would undertake the same.

25. Mr. Bissell advises me that Mr. Kwok answered that the City's hands were tied until a City engineer issued a report favourable to extending the May 1, 2020 deadline, which could be possible if satisfactory interim measures were proposed.
26. Mr. Bissell also advises that in further discussions with Orville Grant, who is Mr. Kwok's supervisor, Mr. Grant has stated that if Mr. Porco's report to the City is not changed by May 1, then the City will be issuing a non-tendered contract to a supplier to begin the process of backfilling the property.
27. The timing that Mr. Porco is imposing in his correspondence is confusing to me. For example:
 - a. in Mr. Porco's April 15, 2020 memo to the City (Exhibit "H", above), he says that backfilling is required by July 30, 2020;
 - b. in that memo, he goes on to say that work on the foundation to avoid backfilling must commence by May 1, 2020;
 - c. for some reason, he then concludes that if foundation work does not commence by May 1, 2020 then immediate backfilling is required, rather than by July 30, 2020;
 - d. the May 1 start date for the construction also seems to be a malleable rather than immutable item for Mr. Porco, because in an email to me on April 30, 2020 attached as **Exhibit "J"**, Mr. Porco stated that one option that would be acceptable to him would be for me to commit to him that work would be started by May 15, 2020 instead;

- e. the May 1 start date was also varied to the close of business on May 4 in an email that Mr. Porco sent to my counsel and counsel for the proposed Receiver on April 30, 2020, attached as **Exhibit “K”**, where he again stated that the deadline to start work could be May 15, 2020 and that he had “to express what leverage I can on this situation” while suggesting that a receiver who has not yet been appointed could engage contractors over the weekend and then agree upon and finalize what I understand would be a contract for more than \$2 million by May 4, 2020.
28. I have significant concerns that Mr. Porco is conflating what he may be qualified to opine about, being the date by which the shoring may not be safe any longer and what different technical measures would remedy that, with what he is not, being what are reasonable steps that I or a receiver could take to address the Work Order when the debtor is defunct, the project is in trouble and liens are on title.
29. I am advised by Joel Ross of Rosen Goldberg that due to the current situation at the property, he does not expect to be able to obtain property insurance. As a result, Rosen Goldberg is not prepared as Receiver to go into possession of the property, and is only prepared to act in a non-possessory manner.
30. The possible absence of insurance for the property is of great concern to me. I hope and believe that if a contractor is engaged by the Receiver to take remedial steps then such contractor will have insurance that provide coverage.

IV. RESPONDENT’S DEFAULTS UNDER THE MORTGAGE

31. Among other possible defaults, as of April 1, 2020, the Respondent was in default to pay \$11,662,601.96 under the Mortgage. In accordance with the Commitment Letter and the Mortgage, that was the first date on which interest was payable after the initial advance, because the first year’s worth of interest to March 31, 2020 had been prepaid.

32. Accordingly I sent to the Respondent, on April 16, 2020, a 30-day demand for payment of that sum and a notice of sale under charge/mortgage, expiring on or about May 26, 2020 in accordance with the Mortgage, as appears from the **Exhibit “L”** copy thereof. When I later learned about the Work Order, I concluded that I needed to act much faster than the late May period under my power of sale notice.
33. I therefore sent to the Respondent, on April 23, 2020, through GSNH:
- a. a demand letter requesting payment of the then outstanding amount of \$11,666,985.75 under the Mortgage, being \$11,500,000 in principal, \$166,985.75 for interests from March 1, 2020 to April 24, 2020, \$4,520 for appraisal costs, and \$15,000 for the amounts, including any taxes, of reasonable costs and disbursements I incurred in respect of the Respondent’s defaults under the Mortgage; and
 - b. a Notice of Intention to Enforce Security pursuant to s. 244(1) of the BIA;
a copy of which is **Exhibit “M”**.
34. On April 24, 2020, Mr. Calvin Ho, lawyer for the Respondent, sent to Mr. Bissell the Respondent’s consent to immediate enforcement, as appears from the **Exhibit “N”** copy of Mr. Ho’s email.
35. As of the date hereof the aforementioned amounts and any further interest accruing remain unpaid.
36. In addition, as at April 27, 2020, the Respondent owed \$104,671.02 in municipal taxes to the City, as appears from the **Exhibit “O”** tax certificate, which constitutes another event of default under my Mortgage and demonstrates that my recourse to the collateral is at risk of being undermined by having prior-ranking claims like municipal taxes add up.

V. RELIEF SOUGHT

37. If the backfilling occurs, my security will be prejudiced by the City's costs taking priority and the excavation and shoring having to be done again for the Project to continue, thus reducing the value of the Project and the Land.
38. If appointed, at the first stage of the receivership I am advised by Mr. Ross that the Receiver intends to urgently review how to respond to the work order, which may include either contracting certain work to address it, or pursuing a sale of the property to a purchaser who would then address that. Based on Mr. Porco's correspondence set out above, other than using it for "leverage" to perform the foundation work in a manner that suits Mr. Porco, there does not seem to be any basis for backfilling to be done immediately.
39. I am prepared to arrange for financing to the Receiver to do review how to respond to the City's Work Order, and likely also for substantive steps to do so, but given the presence of liens and the unstable situation regarding the Land I can only do so through a Receiver's Borrowings Charge.
40. It is just and convenient and in the best interest of all stakeholders in the project, including the Respondent's creditors and the City, to appoint the Receiver. Further, a receivership is a fair and expeditious way to address possible public safety concerns.

VI. NOTICE AND EMERGENCY

41. The material for the herein application will be served to all persons appearing on the Exhibit "E" PPSA search report and the Exhibit "B" parcel register.
42. The communications that I am aware of with those persons is as follows:
- a. I have had no communication with Thrive Capital Management Limited who registered a charge on the Land on July 29, 2019;

[11]

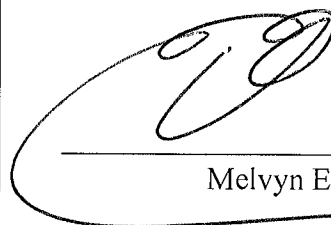
- b. I and Gillam Group Ltd., claimant under a \$1,263,935 construction lien registered on the Land on April 7, 2020, have communicated through counsel regarding initial requests for information made on the Respondent pursuant to s. 39 of the *Construction Act*; and
 - c. I have been contacted by investors in the Olympia Trust Company, who postponed its security on the Lands on February 28, 2019, but only told them to consider retaining legal counsel.
43. In light of the above circumstances and the May 4, 2020 deadline, I believe the herein application is urgent and is appropriately brought on limited notice time.

SWORN BEFORE ME via
videoconference at the City of Toronto, in
the Province of Ontario, this 1st day of
May, 2020



Commissioner for taking affidavits

R. Brendan Bissell



Melvyn Eisen

This is **Exhibit "A"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner, etc.

Request ID: 024466731
Transaction ID: 75274406
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/24
Time Report Produced: 16:54:35
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2442738	DIAM DANFORTH PROPERTY INC.	2014/11/20
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
85 PROLOGIS BLVD		NOT APPLICABLE
Suite # 1		Amalgamation Ind.
MISSISSAUGA		NOT APPLICABLE
ONTARIO		New Amal. Number
CANADA L5W 0G4		NOT APPLICABLE
		Notice Date
		NOT APPLICABLE
Mailing Address		Letter Date
85 PROLOGIS BOULEVARD		NOT APPLICABLE
Suite # 1		Revival Date
MISSISSAUGA		NOT APPLICABLE
ONTARIO		Continuation Date
CANADA L5W 0G4		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum	in Ontario
	Maximum	Date Ceased
	00001	in Ontario
	00005	NOT APPLICABLE
Activity Classification		NOT APPLICABLE
NOT AVAILABLE		

Request ID: 024466731
Transaction ID: 75274406
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Application Record Page No. 40

Date Report Produced: 2020/04/24
Time Report Produced: 16:54:35
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

2442738

Corporation Name

DIAM DANFORTH PROPERTY INC.

Corporate Name History

DIAM DANFORTH PROPERTY INC.

Effective Date

2014/11/20

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

**Administrator:
Name (Individual / Corporation)**

MONINDER
S.
KHUDAL

Address

211 GLENVIEW DRIVE

MISSISSAUGA
ONTARIO
CANADA L5G 2N7

Date Began

2014/11/20

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 024466731
Transaction ID: 75274406
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/24
Time Report Produced: 16:54:35
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

2442738

Corporation Name

DIAM DANFORTH PROPERTY INC.

Administrator:

Name (Individual / Corporation)

MONINDER
S.
KHUDAL

Address

211 GLENVIEW DRIVE

MISSISSAUGA
ONTARIO
CANADA L5G 2N7

Date Began

2014/11/20

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

MONINDER
S.
KHUDAL

Address

211 GLENVIEW DRIVE

MISSISSAUGA
ONTARIO
CANADA L5G 2N7

Date Began

2014/11/20

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF EXECUTIVE OFFICER Y

Resident Canadian

Request ID: 024466731
Transaction ID: 75274406
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Application Record Page No. 42

Date Report Produced: 2020/04/24
Time Report Produced: 16:54:35
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

2442738

Corporation Name

DIAM DANFORTH PROPERTY INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2019	1C	2020/04/12 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

This is **Exhibit "B"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'RSE' followed by a flourish.

A Commissioner, etc.

LAND
REGISTRY
OFFICE #66

21014-1184 (LT)

PREPARED FOR ETooke01
ON 2020/04/16 AT 08:47:17

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PART LOTS 5 S/S DANFORTH AV, 6 S/S DANFORTH AV, 7 S/S DANFORTH AV PLAN 90, PART 1 ON PLAN 66R29513; SUBJECT TO AN EASEMENT AS IN AT4880256; SUBJECT TO AN EASEMENT OVER PART LOTS 5, 6 & 7 S/S DANFORTH AV PLAN 90 PART 1 PLAN 66R29513, EXCEPT PART 1 PLAN 66R30236 AS IN AT4966195; CITY OF TORONTO

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2017/08/25.

ESTATE/QUALIFIER: FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY: RE-ENTRY FROM 21014-0071

PIN CREATION DATE: 2017/08/25

OWNERS' NAMES: DIAM DANFORTH PROPERTY INC.

CAPACITY SHARE: ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
CA131409	1991/03/26	AGREEMENT			CITY OF TORONTO	C
CA131410	1991/03/26	AGREEMENT			CITY OF TORONTO	C
AT3827337	2015/03/06	TRANSFER	\$6,250,000	2359 DANFORTH AVENUE LIMITED	DIAM DANFORTH PROPERTY INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
AT3936000	2015/07/03	CHARGE	\$2,700,000	DIAM DANFORTH PROPERTY INC.	THE GUARANTEE COMPANY OF NORTH AMERICA	C
AT4012890	2015/09/18	CHARGE	\$1,707,164	DIAM DANFORTH PROPERTY INC.	OLYMPIA TRUST COMPANY	C
AT4021726	2015/09/29	POSTPONEMENT		THE GUARANTEE COMPANY OF NORTH AMERICA	OLYMPIA TRUST COMPANY	C
REMARKS: AT3936000 TO AT4012890						
AT4189990	2016/04/11	NOTICE	\$2	DIAM DANFORTH PROPERTY INC.	OLYMPIA TRUST COMPANY	C
REMARKS: AMENDING CHARGE AT4012890						
AT4245994	2016/06/14	POSTPONEMENT		THE GUARANTEE COMPANY OF NORTH AMERICA	OLYMPIA TRUST COMPANY	C
REMARKS: AT3936000 TO AT4189990						
AT4256822	2016/06/23	NOTICE	\$2	DIAM DANFORTH PROPERTY INC.	OLYMPIA TRUST COMPANY	C
REMARKS: AT4012890 AND AT4189990						
AT4327775	2016/08/31	POSTPONEMENT		THE GUARANTEE COMPANY OF NORTH AMERICA	OLYMPIA TRUST COMPANY	C
REMARKS: AT3936000 TO AT4256822						
AT4339970	2016/09/13	NOTICE	\$2	DIAM DANFORTH PROPERTY INC.	OLYMPIA TRUST COMPANY	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND
REGISTRY
OFFICE #66

21014-1184 (LT)

PREPARED FOR ETooke01
ON 2020/04/16 AT 08:47:17

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
		REMARKS: AT4012890				
AT4469987	2017/01/25	POSTPONEMENT		THE GUARANTEE COMPANY OF NORTH AMERICA	OLYMPIA TRUST COMPANY	C
		REMARKS: AT3936000 TO AT4339970				
66R29513	2017/08/25	PLAN REFERENCE				C
AT4663929	2017/08/25	APL ABSOLUTE TITLE		DIAM DANFORTH PROPERTY INC.		C
AT4880256	2018/06/06	TRANSFER EASEMENT	\$2	DIAM DANFORTH PROPERTY INC.	ROGERS COMMUNICATIONS INC.	C
66R30236	2018/08/01	PLAN REFERENCE				C
AT4966195	2018/09/25	TRANSFER EASEMENT	\$2	DIAM DANFORTH PROPERTY INC.	ENBRIDGE GAS DISTRIBUTION INC.	C
AT5085371	2019/02/28	CHARGE	\$11,500,000	DIAM DANFORTH PROPERTY INC.	EISEN, MELVYN COMMUNITY TRUST COMPANY	C
AT5086649	2019/02/28	POSTPONEMENT		OLYMPIA TRUST COMPANY	EISEN, MELVYN	C
		REMARKS: AT4012890 TO AT5085371				
AT5086650	2019/02/28	POSTPONEMENT		THE GUARANTEE COMPANY OF NORTH AMERICA	EISEN, MELVYN	C
		REMARKS: AT3936000 TO AT5085371				
AT5086651	2019/02/28	POSTPONEMENT		OLYMPIA TRUST COMPANY	THE GUARANTEE COMPANY OF NORTH AMERICA	C
		REMARKS: AT4012890 TO AT3936000				
AT5198008	2019/07/29	CHARGE	\$9,000,000	DIAM DANFORTH PROPERTY INC.	THRIVE CAPITAL MANAGEMENT LIMITED	C
AT5403306	2020/04/07	CONSTRUCTION LIEN	\$1,263,935	GILLAM GROUP LTD.		C
AT5406454	2020/04/14	CONSTRUCTION LIEN	\$48,103	COPE PROJECT MANAGEMENT CORP.		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

This is **Exhibit "C"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner, etc.

MELVYN D. EISEN

BARRISTER AND SOLICITOR
SUITE 200
70 BOND STREET
TORONTO, CANADA
M5B 1X3

TELEPHONE (416) 367-0136
TELEFAX (416) 366-3882
DIRECT DIAL (416) 865-5321
EMAIL - meleisen@idirect.com

REFER TO FILE NO.

January 16, 2019

TO WHOM IT MAY CONCERN

Dear Sir or Madam:

Re: Melvyn Eisen in trust first mortgage 2359 Danforth Avenue
Toronto, Ontario

I have been asked to arrange a new first mortgage on those lands and premises known as 2359 Danforth Avenue, Toronto.

Borrower

The borrower will be DIAM Danforth Property Inc. and the guarantor will be Moninder Khudal.

You may recall that we have loaned Mr. Khudal money on numerous occasions and at all times he has honor his financial obligations and have shown himself to be an excellent developer of real estate.

Appraisal

We have obtained an appraisal of the said property indicating a current market value in an as is in condition at \$20,400,000.00.

I am enclosing experts of this appraisal and will email you the full appraisal if requested.

As you are aware, this property is located in an excellent area in the City of Toronto and Mr. Khudal had initially offered this condominium for sale and received numerous offers. As the cost of construction has increased, and the value of the property has increased he is re-marketing this property and terminating all current agreements of Purchase and Sale.

First Mortgage

Based on the current as is market value of \$20,400,000.00 we have been asked to arrange a first mortgage on this property for \$11,500,000.00. this mortgage will pay

interest at 9% per annum and have a term of 2 years. The mortgage will be closed for the first 6 months and open thereafter upon payment of 1 month's interest as bonus.

As further incentive, the first year's interest will be prepaid on closing.

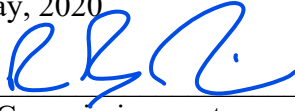
Please contact me if you wish to purchase or if you have any question relating thereto.

Yours very truly,

MELVYN D. EISEN

MDE/fom
Encls.

This is **Exhibit "D"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'R. E. C.' or similar, written over a horizontal line.

A Commissioner, etc.

GENERAL SECURITY AGREEMENT

1. SECURITY INTEREST

- (a) For value received, **DIAM DANFORTH PROPERTY INC.**, whose address for service is 85 Prologis Boulevard, Suite 1, Mississauga, Ontario, L5W 0G4 (the "Debtor"), hereby grants to **MELVYN D. EISEN**, whose address for service is 70 Bond Street, Suite 200, Toronto, Ontario, M5B 1X3 (the "Secured Party"), by way of a mortgage, charge, assignment and transfer, a security interest (the "Security Interest") in the undertaking of the Debtor and in all goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), chattel paper, documents of title (whether negotiable or not), instruments, intangibles and securities now owned or hereafter owned or acquired by or on behalf of the Debtor (including such as may be returned to or repossessed by the Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (hereinafter collectively called "Collateral"), including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Debtor:
- (i) all inventory of whatever kind and wherever situate ("Inventory");
 - (ii) all equipment (other than Inventory) of whatever kind and wherever situate including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;
 - (iii) all book accounts and book debts and generally all accounts, debts, dues, claims, chooses in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor ("Debts");
 - (iv) all deeds, documents, writings, papers, books of account and other books relating to or being records of debts, chattel paper or documents of title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
 - (v) all contractual rights and insurance claims and all goodwill, patents, trademarks, copyrights and other industrial property;
 - (vi) all monies other than trust monies lawfully belonging to others;
 - (vii) all property described in any schedule now or hereafter annexed hereto.
- (b) Notwithstanding the generality of the foregoing, the Security Interest created by this Agreement affects only such Collateral associated with the Debtor's businesses and assets situate in the Province of Ontario (hereinafter called the "Assets").

- (c) The Security Interest granted hereby shall not extend or apply to and Collateral shall not include the last day of the term of any lease or agreement therefor but upon the enforcement of the Security Interest the Debtor shall stand possessed of such term.
- (d) The terms “goods”, “chattel paper”, “documents of title”, “equipment”, “consumer goods”, “instruments”, “intangibles”, “securities”, “proceeds”, “inventory” and “accession” whenever used herein shall be interpreted pursuant to their respective meanings when used in the Personal Property Security Act, R.S.O. 1990, c. P.10, of Ontario, as amended from time to time (herein referred to as the “PPSA”). Provided always that the term “goods” when used herein shall not include “consumer goods” of the Debtor as that term is defined in the PPSA. Any reference herein to “Collateral” shall, unless the context otherwise requires, be deemed a reference to “Collateral or any part thereof”. The terms “proceeds” whenever used herein and interpreted as above shall by way of example include trade-ins, equipment, cash, bank accounts, notes, chattel paper, goods, contract rights, accounts and any other personal property or obligation received when such collateral or proceeds are sold, exchanged, collected or otherwise disposed of.

2. **INDEBTEDNESS SECURED**

The Security Interest granted hereby secures payment and satisfaction of any and all present and future liabilities, obligations, and indebtedness of the Debtor to the Secured Party and interest thereon and the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Secured Party (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the “Indebtedness”).

All arrears of interest calculated at the current rate charged by a Canadian Chartered Bank for commercial loans effective as at the date of such default of payment shall be added to the principal amount outstanding under the Indebtedness and shall bear interest at the interest rate after default, maturity and judgement compounded at each interest payment date and all such arrears and interest on interest shall be a charge on the Assets as defined herein.

3. **REPRESENTATIONS AND WARRANTIES OF THE DEBTOR**

The Debtor represents and warrants and so long as this Security Agreement remains in effect shall be deemed to continuously represent and warrant that:

- (a) the Collateral is genuine and owned by the Debtor free of all security interests, mortgages, liens, claims, charges or other encumbrances (hereinafter collectively called “Encumbrances”), save for the Security Interest and those Encumbrances hereafter approved in writing by the Secured Party, prior to their creation or assumption;
- (b) each debt, chattel paper and instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (“Account Debtor”), and the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and

unconditionally owing by such Account Debtor or Account Debtors except for normal cash discounts where applicable, and no Account Debtor will have any defence, set off, claim or counterclaim against the Debtor which can be asserted against the Secured Party, whether in any proceeding to enforce Collateral or otherwise; and

- (c) the location specified in Schedule 'A' hereto as to business operations and records is accurate and complete and with respect to Goods (including Inventory) constituting Collateral.

4. **COVENANTS OF THE DEBTOR**

So long as this Security Agreement remains in effect the Debtor covenants and agrees:

- (a) to defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein; to keep the Collateral free from all Encumbrances, except for the Security Interest and those hereafter approved in writing by the Secured Party, prior to their creation or assumption and not to sell, exchange, transfer, assign, lease, or otherwise dispose of Collateral or any interest therein without the prior written consent of the Secured Party; provided always that, until default, the Debtor may in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to Clause 6 hereof, use monies available to the Debtor;
- (b) to notify the Secured Party promptly of:
 - (i) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's business or Collateral;
 - (ii) the details of any significant acquisition of Collateral;
 - (iii) the details of any claims or litigation affecting the Debtor or Collateral;
 - (iv) any loss or damage to Collateral;
 - (v) any default by any Account Debtor in payment or other performance of his obligations with respect to Collateral; and
 - (vi) the return to or repossession by the Debtor of Collateral;
- (c) to keep the Collateral in good order, condition and repair and not to use Collateral in violation of the provisions of this Security Agreement or any other agreement relating to Collateral or any policy insuring Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (d) to do, execute, acknowledge and deliver such financing statements and further assignments, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by the Secured Party of or with respect to Collateral

in order to give effect to these presents and to pay all costs for searches and filings in connection therewith;

- (e) to pay all taxes, rates, levies, assessments and other charges of every nature which may be lawfully levied, assessed or imposed against or in respect of the Debtor or Collateral as and when the same become due and payable;
- (f) to insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Secured Party shall reasonably direct with loss payable to the Secured Party and the Debtor, as insured, as its interest may appear, and to pay all premiums therefor;
- (g) to prevent Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an accession to other property not covered by this Agreement;
- (h) to carry on and conduct the businesses of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's businesses as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral at the Secured Party's request so as to indicate the Security interest;
- (i) to deliver to the Secured Party from time to time promptly upon request:
 - (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to Collateral;
 - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral for the purpose of inspecting, auditing or copying the same;
 - (iii) all financial statements prepared by or for the Debtor regarding the Debtor's businesses;
 - (iv) all policies and certificates of insurance relating to Collateral; and
 - (v) such information concerning Collateral, the Debtor and the Debtor's businesses and affairs as the Secured Party may reasonably request.
- (j) that unless and until the written consent of the Secured Party has been obtained, the Debtor,
 - (i) shall not enter into, nor sign, nor execute any leases, offers to lease or any tenancy agreements;
 - (ii) shall not remove any fixtures or any leasehold improvements; and

- (iii) shall not mortgage, charge or hypothecate any of the Assets or properties secured hereunder.

5. **USE AND VERIFICATION OF COLLATERAL**

Subject to compliance with the Debtor's covenants herein and Clause 6 hereof, the Debtor may, until default, possess, operate, collect, use and enjoy and deal with Collateral in the ordinary course of the Debtor's businesses in any manner not inconsistent with the provisions hereof; provided always that the Secured party shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner the Secured Party may consider appropriate and the Debtor agrees to furnish all assistance and information and to perform all such acts as the Secured Party may reasonably request in connection therewith and for such purpose to grant to the Secured Party or his agents access to all places where Collateral may be located.

6. **COLLECTION OF DEBTS FORMING PART OF COLLATERAL**

Before or after default under this Security Agreement, the Secured Party may notify all or any Account Debtors of the Secured Interest and may also direct such Account Debtors to make all payments on Collateral to the Secured Party. The Debtor acknowledges that any payments on or other proceeds of Collateral received by the Debtor from Account Debtors, whether before or after notification of this Security Interest to Account Debtors and whether before or after default under this Security Agreement shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party upon request.

7. **DISPOSITION OF MONIES**

Subject to any applicable requirements of the PPSA, all monies collected or received by the Secured Party pursuant to or in exercise of any right he possesses with respect to Collateral shall be applied on account of Indebtedness in such manner as the Secured Party deems best or, at the option of the Secured Party, may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or the rights of the Secured Party hereunder, and any surplus shall be accounted for as required by law.

8. **EVENTS OF DEFAULT**

The happening of any of the following events or conditions shall constitute default hereunder (hereinafter referred to as "default"):

- (a) the non-payment when due, whether by acceleration or otherwise, of any principal or interest forming part of the Indebtedness or the failure of the Debtor to observe or perform any obligation, covenant, term, provision, or condition contained in this Security Agreement or any other document or agreement between the Debtor and the Secured Party relating to the Indebtedness;
- (b) the bankruptcy or insolvency of the Debtor; the filing against the Debtor of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the

Debtor; the appointment of a receiver or trustee for the Debtor or for any assets of the Debtor; or the institution by or against the Debtor of any other type of insolvency proceeding under the Bankruptcy Act or otherwise;

- (c) the institution by or against the Debtor of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of the Debtor;
- (d) if any Encumbrance affecting Collateral becomes enforceable against Collateral.

9. **REMEDIES**

- (a) Upon default, the Secured Party may appoint or reappoint by instrument in writing, any person or persons, whether an employee or employees of the Secured Party or not, to be a receiver or receivers (hereinafter called "receiver", which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any receiver so appointed and appoint another in his stead. Any such receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor and not the Secured Party and the Secured Party shall not be in any way responsible for any misconduct, negligence, or non-feasance on the part of any such receiver, his servants, agents or employees. Subject to the provisions of the instruments appointing him, any such receiver shall have the power to take possession of Collateral, to preserve Collateral or its value, to carry on or concur in carrying on all or any part of the business of the Debtor and to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of Collateral. To facilitate the foregoing powers any such receiver may, to the exclusion of all others, including the Debtor, enter upon, use and occupy all premises owned or occupied by the Debtor wherein Collateral may be situate, maintain Collateral upon such premises, borrow money on a secured or unsecured basis and use Collateral directly in carrying on the Debtor's businesses or otherwise, as such receiver shall, in his discretion, determine. Except as may be otherwise directed by the Secured Party, all monies received from time to time by such receiver in carrying out his appointment shall be received in trust for and paid over to the Secured Party. Every such receiver may, in the discretion of the Secured Party, be vested with all or any of the rights and powers of the Secured Party.
- (b) Upon default, the Secured Party may, either directly or indirectly or through his agents or nominees, exercise any or all of the powers and rights given to a receiver by virtue of the foregoing sub-clause (a).
- (c) The Secured Party may take possession of, collect, demand, sue on, enforce, recover and receive Collateral and give value and binding receipts and discharges therefor and in respect thereof and, upon default, the Secured party may sell, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to the Secured Party may seem reasonable.

- (d) In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Debtor and the Secured party and in addition to any other rights the Secured Party may have at law or in equity, the Secured Party shall have, both before and after default, all rights and remedies of a secured party under the PPSA. Provided always that the Secured Party shall not be liable or accountable for any failure to exercise his remedies, take possession of, collect, enforce, realise, sell, lease or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, the Secured Party shall have no obligation to take any steps to preserve rights against prior parties to any instrument or chattel paper whether Collateral or proceeds and whether or not in the Secured Party's possession and shall not be liable or accountable for failure to do so.
- (e) The Debtor acknowledge that the Secured Party or any receiver appointed by him may take possession of Collateral wherever it may be located and by any method permitted by law and the Debtor agrees upon request from the Secured Party or any such receiver to assemble and deliver possession of Collateral at such place or places as directed.
- (f) The Debtor agrees to pay all costs, charges and expenses reasonably incurred by the Secured Party or any receiver appointed by him, whether directly or for services rendered (including reasonable solicitors' and auditors' costs and other legal expenses and receiver remuneration), in operating the Debtor's accounts, in preparing or enforcing this Security Agreement, taking custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting Indebtedness and all such costs, charges and expenses, together with any monies owing as a result of any borrowing by the Secured Party or any receiver appointed by him, as permitted hereby, shall be a charge on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.
- (g) The Secured party will give the Debtor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made, as may be required by the PPSA.

10. MISCELLANEOUS

- (a) The Debtor hereby authorizes the Secured Party to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying Collateral or any permitted Encumbrances affecting Collateral) as the Secured Party may deem appropriate to perfect and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest, and the Debtor hereby irrevocably constitutes and appoints the Secured Party the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient.
- (b) Upon the Debtor's failure to perform any of its duties hereunder, the Secured Party may, but shall not be obligated to, perform any or all such duties, and the Debtor shall pay to the Secured Party, forthwith upon written demand therefor, an amount equal to the expense incurred by the Secured party in so doing plus interest thereon from the date such expense

is incurred until it is paid at the rate per annum of the interest rate set forth in the said Promissory Note, which interest shall be calculated monthly and adjusted monthly on the first day of each month and payable monthly.

- (c) The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compromise, settle, grant releases and discharges and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize the Security Interest. Furthermore, the Secured Party may demand, collect and sue on Collateral in either the Debtor's or the Secured Party's name, at the Secured Party's option, and may endorse the Debtor's names on any and all cheques, commercial paper and any other instrument pertaining to or constituting Collateral.
- (d) No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Secured Party may remedy any default by the Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Debtor. All rights and remedies of the Secured Party granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (e) The Debtor waives protest of any instrument constituting Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to Clause 9(g) hereof, notice of any other action taken by the Secured Party.
- (f) This Security Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective legal, personal representatives, successors and assigns.
- (g) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Security Agreement shall be made except by a written agreement executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.
- (h) Subject to the requirements of Clauses 9(g) and 10(e) hereof, whenever either party hereto is required or entitled to notify or direct the other or to make a demand or request upon the other, such notice, direction, demand or request shall be in writing and shall be sufficiently given only if delivered to the party for whom it is intended at the principal address of such party herein set forth or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the principal address of such party herein set forth or as changed pursuant hereto. Either party may notify the other pursuant hereto of any change in such party's principal address to be used for the purpose hereof.

- (i) This Security Agreement and the security afforded hereby shall remain in full force and effect until all indebtedness contracted for or created shall be paid in full.
- (j) The headings used in this Security Agreement are for convenience only and are not to be considered a part of this Security Agreement and do not in any way limit or amplify the terms and conditions of this Security Agreement.
- (k) When the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being male, female, firm or corporation.
- (l) In the event any provisions of this Security Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in force and effect.
- (m) Nothing herein contained shall in any way obligate the Secured Party to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Indebtedness.
- (n) The Security Interest created hereby is intended to attach when this Security Agreement is signed by the Debtor and delivered to the Secured Party.


11. **COPY OF AGREEMENT**

The Debtor hereby acknowledges receipt of a copy of this Security Agreement.

IN WITNESS WHEREOF Debtor has executed this Security Agreement under the hands of their authorized signing officers as of this 7th day of February, 2019.

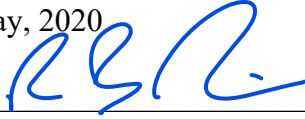
DIAM DANFORTH PROPERTY INC.

Per: _____


Moninder Khudal
President

I have authority to bind the corporation.

This is **Exhibit "E"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'RBE'.

A Commissioner, etc.

Enquiry Result

File Currency: 23APR 2020



All Pages ▾

Show All Pages

Note: All pages have been returned.

Type of Search	Business Debtor								
Search Conducted On	DIAM DANFORTH PROPERTY INC.								
File Currency	23APR 2020								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	707060016	1	3	1	7	12JUN 2025			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
707060016		001	1		20150612 1225 1590 7583	P PPSA	10		
Individual Debtor	Date of Birth	First Given Name		Initial	Surname				
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	DIAM DANFORTH PROPERTY INC.								
	Address			City	Province	Postal Code			
	SUITE 212 199 ADVANCE BLVD.			BRAMPTON	ON	L6T 4N2			
Individual Debtor	Date of Birth	First Given Name		Initial	Surname				
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	THE GUARANTEE COMPANY OF NORTH AMERICA								
	Address			City	Province	Postal Code			
	SUITE 1400, 4950 YONGE STREET			TORONTO	ON	M2N 6K1			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
				X	X				
Motor Vehicle Description	Year	Make		Model		V.I.N.			
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	HARRIS SHEAFFER LLP (GHH/LT - MATTER NO. 150614)								
	Address			City	Province	Postal Code			
	SUITE 610, 4100 YONGE STREET			TORONTO	ON	M2P 2B5			

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	DIAM DANFORTH PROPERTY INC.				Application Record Page No. 61				
File Currency	23APR 2020								
	File Number	Family	of Families	Page	of Pages				
	707060016	1	3	2	7				
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number		Registered Under		
		001	3		20170630 1509 1590 7333				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required		Renewal Years	Correct Period		
	707060016			J OTHER					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	DIAM DANFORTH PROPERTY INC.								
Other Change	Other Change								
	SUBORDINATION/POSTPONEMENT								
Reason / Description	Reason / Description								
	SUBORDINATION AND POSTPONEMENT OF THIS REGISTRATION (REF. FILE NO. 707060016, REG. NO. 20150612 1225 1590 7583) IN FAVOUR OF THE GUARANTEE COMPANY OF NORTH AMERICA TO REF. FILE NO. 726930936, REG.								
Debtor/ Transferee	Date of Birth	First Given Name		Initial	Surname				
	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address			City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	GARDINER ROBERTS LLP (ZZ)								
	Address				City	Province	Postal Code		
	3600-22 ADELAIDE STREET WEST				TORONTO	ON	M5H 4E3		

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	DIAM DANFORTH PROPERTY INC.				Application Record Page No. 62				
File Currency	23APR 2020								
	File Number	Family	of Families	Page	of Pages				
	707060016	1	3	3	7				
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under			
		002	3		20170630 1509 1590 7333				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	707060016								
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
Other Change	Other Change								
Reason / Description	Reason / Description								
	NO. 20170425 1615 1590 2470, FILE NO. 726930891, REG. NO. 20170425								
	1614 1590 2469 AND FILE NO. 726930882, REG. NO. 20170425 1613 1590								
	2468 IN FAVOUR OF FIRST NATIONAL FINANCIAL GP CORPORATION, TO THE								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	Address				City	Province	Postal Code		

Type of Search	Business Debtor									
Search Conducted On	DIAM DANFORTH PROPERTY INC.						Application Record Page No. 63			
File Currency	23APR 2020									
	File Number	Family	of Families	Page	of Pages					
	707060016	1	3	4	7					
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT										
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under		
		003	3		20170630 1509 1590 7333					
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required			Renewal Years	Correct Period		
	707060016									
Reference Debtor/ Transferor	First Given Name			Initial	Surname					
	Business Debtor Name									
Other Change	Other Change									
Reason / Description	Reason / Description									
	EXTENT PROVIDED FOR IN THE SUBORDINATION AGREEMENT.									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name									
	Address							City	Province	Postal Code
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	Address				City	Province	Postal Code			

Type of Search	Business Debtor								
Search Conducted On	DIAM DANFORTH PROPERTY INC.			Application Record Page No. 64					
File Currency	23APR 2020								
	File Number	Family	of Families	Page	of Pages				
	707060016	1	3	5	7				
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under			
		001	001		20181217 1445 1862 8978				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	707060016		X	A AMNDMNT					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	DIAM DANFORTH PROPERTY INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
	THE ADDRESS FOR THE DEBTOR HAS CHANGED.								
Debtor/ Transferee	Date of Birth	First Given Name		Initial	Surname				
	Business Debtor Name				Ontario Corporation Number				
	DIAM DANFORTH PROPERTY INC.								
	Address			City	Province	Postal Code			
	85 PROLOGIS BLVD, SUITE 1			MISSISSAUGA	ON	L5W 0G4			
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address			City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	HARRIS, SHEAFFER LLP (GHH/ER 150614)								
	Address				City	Province	Postal Code		
	610-4100 YONGE STREET				TORONTO	ON	M2P 2B5		

END OF FAMILY

Type of Search	Business Debtor								
Search Conducted On	DIAM DANFORTH PROPERTY INC.						Application Record Page No. 65		
File Currency	23APR 2020								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	741642318	2	3	6	7	16JUL 2023			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number		Registered Under	Registration Period	
741642318		01	001		20180716 1433 1530 3606		P PPSA	5	
Individual Debtor	Date of Birth		First Given Name		Initial		Surname		
Business Debtor	Business Debtor Name						Ontario Corporation Number		
	DIAM DANFORTH PROPERTY INC.								
	Address				City	Province	Postal Code		
	85 PROLOGIS BLVD, UNIT 1				MISSISSAUGA	ON	L5W 0G4		
Individual Debtor	Date of Birth		First Given Name		Initial		Surname		
Business Debtor	Business Debtor Name						Ontario Corporation Number		
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	ROYAL BANK OF CANADA								
	Address				City	Province	Postal Code		
	36 YORK MILLS ROAD, 4TH FLOOR				TORONTO	ON	M2P 0A4		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
				X	X				
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	CANADIAN SECURITIES REGISTRATION SYSTEMS								
	Address				City	Province	Postal Code		
	4126 NORLAND AVENUE				BURNABY	BC	V5G 3S8		

END OF FAMILY

Type of Search	Business Debtor							Application Record Page No. 66	
Search Conducted On	DIAM DANFORTH PROPERTY INC.								
File Currency	23APR 2020								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	748765341	3	3	7	7	04MAR 2021			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
748765341		001	001		20190304 1426 1862 3900	P PPSA	2		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	DIAM DANFORTH PROPERTY INC.					2442738			
	Address				City	Province	Postal Code		
	85 PROLOGIS BOULEVARD, SUITE 1				MISSISSAUGA	ON	L5W 0G4		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	MELVYN D. EISEN								
	Address				City	Province	Postal Code		
	70 BOND STREET, SUITE 200				TORONTO	ON	M5B 1X3		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X		01MAR2021	
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	GENERAL SECURITY AGREEMENT.								
Registering Agent	Registering Agent								
	CYBERBAHN								
	Address				City	Province	Postal Code		
	400-333 BAY STREET				TORONTO	ON	M5H 2R2		

LAST PAGE

Note: All pages have been returned.

[BACK TO TOP](#)



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[ServiceOntario Contact Centre](#)

This is **Exhibit "F"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

A Commissioner, etc.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 21014 - 1184 LT **Interest/Estate** Fee Simple

Description PART LOTS 5 S/S DANFORTH AV, 6 S/S DANFORTH AV, 7 S/S DANFORTH AV PLAN 90, PART 1 ON PLAN 66R29513; SUBJECT TO AN EASEMENT AS IN AT4880256; SUBJECT TO AN EASEMENT OVER PART LOTS 5, 6 & 7 S/S DANFORTH AV PLAN 90 PART 1 PLAN 66R29513, EXCEPT PART 1 PLAN 66R30236 AS IN AT4966195; CITY OF TORONTO

Address 2359 DANFORTH AVENUE
TORONTO

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name DIAM DANFORTH PROPERTY INC.

Address for Service 85 Prologis Blvd.
Suite 1
Mississauga Ontario
L5W 0G4

I, Moninder Khudal, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)**Capacity****Share**

Name	EISEN, MELVYN	as to 99.56%
Address for Service	70 Bond Street Suite 200 Toronto, Ontario M5B 1X3	
Name	COMMUNITY TRUST COMPANY	as to a 0.44%
Address for Service	Community Trust Company ITF RRIF 6000088 2350 Matheson Blvd East Mississauga Ontario L4W 5G9	

Statements

Schedule: See Schedules

Provisions

Principal	\$11,500,000.00	Currency	CDN
Calculation Period	monthly		
Balance Due Date	2021/02/01		
Interest Rate	10%		
Payments	\$95,833.33		
Interest Adjustment Date	2019 02 01		
Payment Date	The first day of every month		
First Payment Date	2019 03 01		
Last Payment Date	2021 02 01		
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor	Moninder Khudal		

Additional Provisions

The first years' interest will be prepaid on closing.

This mortgage is closed for the first year, and open thereafter upon payment of 1 months' interest as bonus.

The applicant(s) hereby applies to the Land Registrar.

Signed By

Erin Elizabeth Tooke	200-70 Bond St. Toronto M5B 1X3	acting for Chargor(s)	Signed	2019 02 28
----------------------	---------------------------------------	--------------------------	--------	------------

Tel 416-367-0136

Fax 416-366-3882

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

MELVYN D. EISEN	200-70 Bond St. Toronto M5B 1X3			2019 02 28
-----------------	---------------------------------------	--	--	------------

Tel 416-367-0136

Fax 416-366-3882

Fees/Taxes/Payment

Statutory Registration Fee	\$64.40
Total Paid	\$64.40

Additional Property Identifier(s) and/or Other Information

The terms contained in this Schedule are in addition to the terms contained in the Standard Charge Terms. In the event of any conflict between the terms contained in this schedule and those contained in the Standard Charge Terms, the terms contained this schedule shall, to the extent of the conflict, prevail. If the Standard Charge Terms refer to a Guarantors, the term "Guarantors" shall include any party named anywhere in the Charge as a guarantor or covenantor.

The Mortgagor hereby agrees to pay interest on the Principal Amount at the rate of ten (10%) percent per annum, calculated and payable monthly, not in advance, both before and after maturity. Interest is payable on the first day of each and every month of the term, from and including the 1st day of April, 2019 to and including the 1st day of March, 2020. Payments received by the mortgagee after 1 : 00 pm must include interest to the next banking day.

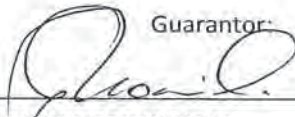
The first years' interest will be prepaid on closing.

This mortgage is closed for the first year, and open thereafter upon payment of one (1) months' interest as bonus.

The Mortgagor agrees to pay the sum of Four Hundred Dollars (\$400.00) if any mortgage cheque is returned NSF. The Mortgagor agrees to deliver to the Mortgagee, a series of post-dated cheques on each anniversary date of the mortgage for the following year. This mortgage is not transferable to or assumable by any party without the prior consent of the Mortgagee in its sole discretion, which may be unreasonably withheld, failing which the Mortgagee may accelerate repayment of the entire principal.

GUARANTORS'S CLAUSE

The Guarantor hereby agrees to be bound by the terms and conditions of the Guarantee contained in the Standard Charge Terms filed as No. 200033, and furthermore, IN CONSIDERATION OF the premises and of the Mortgagee advancing any of the principal monies hereby secured to the Mortgagor on the terms and conditions hereinbefore set out, Moninder Khudal (hereinafter called the Guarantor) do hereby absolutely and unconditionally guarantee to the Mortgagee and its successors and assigns the due and punctual payment by the Mortgagor of all principal monies, interest and other monies owing on the security of the Mortgage, and the Guarantors, for themselves, their respective heirs, executors and administrators, covenants with the Mortgagee that if the Mortgagor shall at any time make default in the punctual payment of any monies payable hereunder, the Guarantors will pay all such monies to the Mortgagee without any demand being required to be made.

Guarantor: 
MONINDER KHUDAL

FOR OFFICE USE ONLY



This is **Exhibit "G"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'M.E.' followed by a flourish.

A Commissioner, etc.

LRO # 80 **Transfer Of Charge**

Received as AT5412952 on 2020 04 22 at 09:15

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 21014 - 1184 LT
Description PART LOTS 5 S/S DANFORTH AV, 6 S/S DANFORTH AV, 7 S/S DANFORTH AV PLAN 90, PART 1 ON PLAN 66R29513; SUBJECT TO AN EASEMENT AS IN AT4880256; SUBJECT TO AN EASEMENT OVER PART LOTS 5, 6 & 7 S/S DANFORTH AV PLAN 90 PART 1 PLAN 66R29513, EXCEPT PART 1 PLAN 66R30236 AS IN AT4966195; CITY OF TORONTO
Address 2359 DANFORTH
TORONTO

Source Instruments

Registration No.	Date	Type of Instrument
AT5085371	2019 02 28	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name EISEN, MELVYN
Address for Service 70 Bond Street
Suite 200
Toronto Ontario
M5B 1X3

This document is not authorized under Power of Attorney by this party.

Name COMMUNITY TRUST COMPANY
Address for Service Community Trust Company ITF
RRIF 6000088 (Lila Orbach)
2350 Matheson Blvd. East
Mississauga Ontario L4W 5G9

I, Ram Senthil and Lisa Abbatangelo, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Transferee(s)**Capacity****Share**

Name EISEN, MELVYN		as to 0.44%
Address for Service 70 Bond Street Suite 200 Toronto Ontario M5B 1X3		

Statements

The chargee transfers the selected charge for \$1.00

The chargee transfers 0.44% of the selected charge.

Schedule: This transfer is without recourse to the transferor which makes no representation or warranty as to the validity or enforceability of the mortgage or any provision thereof or as to the priority of the mortgage or of any advances made thereunder.

This document relates to registration number(s)AT5085371

Signed By

Erin Elizabeth Tooke	200-70 Bond St. Toronto M5B 1X3	acting for Transferor(s)	Signed	2020 04 22
----------------------	---------------------------------------	-----------------------------	--------	------------

Tel 416-367-0136

Fax 416-366-3882

I have the authority to sign and register the document on behalf of all parties to the document.

Erin Elizabeth Tooke	200-70 Bond St. Toronto M5B 1X3	acting for Transferee(s)	Signed	2020 04 22
----------------------	---------------------------------------	-----------------------------	--------	------------

Tel 416-367-0136

Fax 416-366-3882

I have the authority to sign and register the document on behalf of all parties to the document.

LRO # 80 **Transfer Of Charge**

Received as AT5412952 on 2020 04 22 at 09:15

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

Submitted By

MELVYN D. EISEN

200-70 Bond St.
Toronto
M5B 1X3

2020 04 22

Tel 416-367-0136

Fax 416-366-3882

Fees/Taxes/Payment

Statutory Registration Fee

\$65.05

Total Paid

\$65.05

File Number

Transferor Client File Number :

19-102 POS

Transferee Client File Number :

19-102 POS

This is **Exhibit "H"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'RBC' followed by a flourish.

A Commissioner, etc.

Toronto Buildings
Toronto City Hall
100 Queen St. W., 16th Floor
Toronto, ON M5H 2N2

File No. 19-001
April 15, 2020

Attention: Kamal Gogna
Selva Panchanatham
Dino Coletti
Frank Stirpe

Subject: 2359 Danforth Avenue, Toronto, Ontario

Shoring System Serviceability Failure & Public Safety Concern

Please be advised that the construction of the development at 2359 Danforth Avenue has stopped and the site is currently left with an open excavated hole and a temporary shoring system that is well past its service life. This poses a significant public safety concern.

A briefly summary of the site history is as follows:

- Shoring & excavation site activities commenced on or about November, 2017.
- The base of excavation was reached on or about October, 2018.
- Site activities were suspended and Skygrid Construction terminated their contract with DIAM Developments in December, 2018.
- On January 10, 2019 I issued a letter flagging the extension of and provided an extended of the system's service life for an additional 6-12 months.
- Gillam Group was retained by DIAM Developments in July, 2019.
- On July 12, 2019 I issued a letter to DIAM Developments requesting the substantive construction progress by September 1, 2019 for the shoring system to be deemed obsolete.
- Following this letter, Gillam Group submitted a construction schedule which indicated completion of the underground structure by December, 2019.
- Grounded was retained to carry over the shoring design from Terraprobe in October, 2019. A remediation plan was issued on November 12, 2019.
- The site remained dormant in terms of construction activity from January, 2019 until January, 2020.
- Gillam's site activities commenced in February, 2020 and were suspended once again in March, 2020.

I am writing to inform you that the current state of the shoring now poses a public safety concern and my recommendation is that it must be addressed immediately, as follows:

- Implement the recommendations of the shoring remediation plan and carry on with construction of the below-grade structure (i.e. continue placement of concrete foundations, subfloor drainage system, and concrete slabs/walls/columns) by **no later than May 1, 2020**; and

2359 Danforth Avenue, Toronto, Ontario
 Shoring System Serviceability Failure & Public Safety Concern
 April 15, 2020



- Complete construction of the P1 suspended slab by **no later than 90 days thereafter, or by July 30, 2020.**

In light of the COVID-19 pandemic, the work described above falls under O.Reg. 82/20 'Closure of Places of Non-Essential Businesses' as amended on April 3, 2020. Specifically, clause 31 of the revised Schedule 2 of the Updated Emergency Order, which reads:

31. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure public safety.

Should construction activities fail to commence in a significant way by May 1, 2020, in my professional opinion the excavation, a backfilling operation must be undertaken to berm the site up to the equivalent to the P1 elevation by no later than July 30, 2020.

Should I not receive confirmation from the project team that construction activities are re-commencing by May 1, 2020, I will recommend that Toronto Buildings issues an emergency order to demand the immediate backfilling of the site to reinstate the pre-existing grades.

In the meantime, we will continue to monitor the performance of the shoring system and will advise if the condition changes.

We trust that the information contained in this letter is sufficient for your present requirements. If we can be of further assistance, please do not hesitate to contact us.



Michael Porco, P.Eng.
 Principal



CC:

Alla Groznaya – Cope Project Management
 Miles Cope – Cope Project Management
 Moninder Khudal – DIAM Developments

This is **Exhibit "I"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'M.E.' followed by a period.

A Commissioner, etc.

100 Queen Street West
 Toronto, ON M5H 2N2
 BCIN: 17523

Order to Remedy Unsafe Building

Pursuant to Subsection 15.9(4) of the *Building Code Act, 1992*

Order Number: 20 134814 UNS 00 VI

Date Order issued: April 17, 2020

Address to which Order applies:

Application/Permit Number:

2359 DANFORTH AVE

N/A

Order issued to:

DIAM DANFORTH PROPERTY INC
 MONINDER KHUDAL
 85 PROLOGIS BLVD SUITE 1
 MISSISSAUGA, ON L5W 0G4
 CAN

An Inspection on or about Apr 17, 2020 at the above referenced address found the building to be in an unsafe condition as defined in Sentence 15.9 (2) of the Building Code Act, 1992.

You are hereby ordered to take the required actions itemized below by the dates listed below, or by May 1, 2020.

Item	Reference	Description and location	Required action and compliance date
1	BCA 15.9(2)	The attached engineering report from Michael Porco of Grounded Engineering regarding the Shoring System Serviceability Failure & Public Safety Concern dated April 15, 2020. The temporary shoring system that is well past its service life after May 1, 2020 and this poses a significant public safety concern.	<p>You are required to do the remedial action as prescribed by the engineer in the said report. The action should be supervised by a Geotechnical Engineer who should issue a report when it is completed.</p> <p>P.S. In light of the COVID-19 pandemic, the work described above falls under O.Reg. 82/20 `Closure of Places of Non-Essential Businesses; as amended on April 3, 2020. Specifically, clause 31 of the revised Schedule 2 of the Updated Emergency Order, which reads: 31. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure public safety.</p>

Order issued by:

Signature *Jackson Kwok* BCIN 25140 Telephone 416-338-0700
 Name Jackson Kwok, Building Specialist Facsimile 416-696-4151
 Address Toronto Building Division, 95 The Esplanade Ground Floor Toronto, ON M5E 2A2

Note:


- The Signature above is the unique electronic signature of Jackson Kwok, it can only be added by Jackson Kwok and was produced after Jackson Kwok electronically authenticated this document.
- It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an inspector or Registered Code Agency. [Building Code Act, 1992 s. 20]
- An Order may be appealed to the Superior Court of Justice. [Building Code Act, 1992 s. 25]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [Building Code Act, 1992 s. 24]
- Failure to comply with this Order is an offence which could result in a fine. [Building Code Act, 1992 s.36]

100 Queen Street West
Toronto, ON M5H 2N2
BCIN: 17523

Order to Remedy Unsafe Building

Pursuant to Subsection 15.9(4) of the *Building Code Act, 1992*

This is **Exhibit "J"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, appearing to be 'R. E. Eisen', written over a horizontal line.

A commissioner etc.

From: Mike Porco <mporco@groundedeng.ca>
Sent: April 30, 2020 2:08 PM
To: meleisen@idirect.com
Subject: 2359 Danforth

Hi Mel,

Further to our past conversation, it's now April 30th and Orville Grant from Toronto Buildings has reached out to multiple times today asking about my stance towards backfilling the site starting May 1st as per the letter I sent to them on April 15th.

For me to provide a relaxation of the May 1st start date, I will require one of two scenarios as detailed below by 5pm today:

1. A purchaser is brought on board and can provide me with proof of the sale and confirmation of the closing date. The proposed developer must have the experience, knowledge, and immediate ability to carry out the work in an expedited manner. They must also understand the financial commitment they need to make in order to construct the below-grade structure, so that we do not run into the same scenario as Moninder put me in whereby he had possession of the site but no financial means to carry out the work.
2. You confirm in writing that you have engaged a reputable party to proceed with the full scope of the work plan set out in my April 15th letter, starting no later than May 15th. I would like to understand who the party is, their experience, and to have a conversation with them to confirm their ability to conduct the work.

Unfortunately I am not in a position to allow the site to remain open for one day longer than necessary at this point. I intend to send one of two letters to Toronto Buildings this evening at 5pm. If you are able to provide me with the above then I will grant a relaxation of up to May 15th. If not, I will indicate my support for Toronto Buildings to proceed with the non-tendered backfilling operation immediately.

Regards,

Mike Porco PEng
Principal, Geotechnical Engineering



Grounded Engineering Inc.
12 Banigan Drive, Toronto, ON M4H 1E9
mporco@groundedeng.ca | www.groundedeng.ca | 647-264-7911



This email has been checked for viruses by Avast antivirus software.
www.avast.com

This is **Exhibit "K"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'M.E.' followed by a flourish.

A Commissioner, etc.

Brendan Bissell

From: Mike Porco <mporco@groundedeng.ca>
Sent: Thursday, April 30, 2020 6:51 PM
To: Chad Kopach
Cc: Brendan Bissell; Joel Ross; Eric Golden; Joel Turgeon; Katie Parent
Subject: RE: 2359 Danforth

Chad,

I understand and respect your position, but nevertheless this is my prerogative as the Shoring Engineer of Record at this site.

You are comparing apples to oranges by claiming that I am picking sides because I would allow a relaxation to a prospective new purchaser to May 15th but not offer the same leeway to the receivership group. I understand that it would take a certain time period (I am assuming two weeks) for a prospective purchaser to close a deal and get on title to be able to commence work. Through the course of the week I have heard from many interested parties, yourself included, and I have indicated the same messaging to all: it is now critical to re-commence construction to avoid the eventual backfilling of the site, in accordance with the dates set out in my letter of April 15th. My messaging has been clear and consistent to all parties. I presume any prospective buyer of the site has already developed their work plan to immediately commence construction as part of their valuation of the site. *It is not for them to spend two weeks to develop a work plan, as you have suggested would be the case for the receivership group.*

I am not confident that by granting the receivership group/process a similar relaxation to May 8th, that construction would re-commence on May 11th or even May 15th. My condition attached to any potential relaxation to May 15th for a prospective purchaser is that they shall provide me with concrete assurances in the form of a detailed construction schedule that I could make reliance on to support my statement to Toronto Buildings. Failing to provide me with that, a prospective developer would not receive said relaxation. I hope you will appreciate there is a stark difference between these two conditions.

While I am being somewhat flexible to avoid the devaluation of the property, my primary duty is in the interest of public safety. I don't have a preference towards the manner of the remedy for this site, only that it is conducted *as soon as possible* under one of the following scenarios:

1. **The site gets sold to a developer to undertake the stabilization work:** that developer provides to me, by no later than EOD May 4th, assurances via a construction schedule indicating the P1 structural slab milestone date is achieved by July 31st, I would then make reliance on this to support a relaxation of 1-2 weeks to allow them to get on title to be in a position to start the work.
2. **The stabilization work is undertaken by the proposed receivership group:** similarly to above, if assurances can be provided to me, by no later than EOD May 4th, in the form of a construction schedule indicating the P1 structural slab milestone date is achieved by July 31st, starting on or about May 8th to 15th, I would then make reliance on this in a response to Toronto Buildings.
3. **The site gets backfilled by Toronto Buildings:** I've already communicated to Toronto Buildings, I copied you on said email, that the new target date is EOD May 4th.

While I would be personally disappointed to see the site get backfilled, my duty as a professional engineer trumps that sentiment and my recommendation to Toronto Buildings on May 5th will be to backfill the site in the interest of public safety.

I hope you will respect my determination on this matter but if not, you and your team are free to engage another engineer to step in and disagree with me. However know that I will not change my position with Toronto Buildings at this point. If they choose to rely on another engineer's determination, so be it. I will recuse myself from the project.

Please let me know what time on Monday the court hearing is planned for, and I will try to make myself available. Given COVID-19 and most of the world working from home right now, I don't think I will be able to prepare a couriered paper file by Monday, but I will prepare a digital file of all of my correspondence for transmission. Grounded is a new firm and almost all of our files are digital so it will be rather straightforward.

Regards,

Mike Porco PEng
Principal, Geotechnical Engineering



Grounded Engineering Inc.
12 Banigan Drive, Toronto, ON M4H 1E9
mporco@groundedeng.ca | www.groundedeng.ca | 647-264-7911

From: Chad Kopach <ckopach@blaney.com>
Sent: April 30, 2020 5:29 PM
To: Mike Porco <mporco@groundedeng.ca>
Cc: 'Brendan Bissell' <bissell@gsnh.com>; Joel Ross <jross@rossadvisory.ca>; Eric Golden <egolden@blaney.com>; Joel Turgeon <turgeon@gsnh.com>; Katie Parent <parent@gsnh.com>
Subject: RE: 2359 Danforth

Mike,

The Receiver must be appointed before it can engage professionals with respect to the necessary work. The first return date for that hearing will be Monday. A week to allow a Receiver to put the plan into place is not unreasonable, especially given your willingness to allow a prospective new purchaser until May 15. Expecting a multimillion dollar agreement to be negotiated over the weekend between a contractor and a Receiver who has not yet been appointed, is not possible or reasonable.

You have stated that your deadline of the end of day on Monday is an attempt to assert leverage, and I understand this is in response to the owner's failure to deal with this property over the last few years. However, this conflates the lender and proposed Receiver on one hand, with the owner on the other. The owner has certain obligations vis-à-vis the property over the years that the lender did not, and the proposed Receiver is new to the matter. I understand your frustration in having given the owner extensions to complete the subgrade work, but it is not right for you to take out your frustration on the Receiver by, in effect, only giving it a few hours (at most) from the hearing on Monday to finalize and implement a plan.

You should make arrangements to attend Monday via videoconference, as the Judge will likely want to know the reasons for your position on the deadline, including why you are prepared to give a new purchaser until May 15 to come up with and implement a plan, but are not prepared to extend the same indulgence to the Court-appointed Receiver (an officer of the Court).

Finally, the Court's standard form of appointment order includes a provision that compels any party with documentation touching on the subject matter of the receivership to deliver up copies of same forthwith to the Receiver. Please take steps to have your entire file ready to be delivered up to the Receiver on Monday.

Chad

Chad Kopach

Partner

ckopach@blaney.com

☎ 416-593-2985 | ☎ 416-594-5095

From: Mike Porco [<mailto:mporco@groundedeng.ca>]

Sent: April 30, 2020 4:14 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: 'Brendan Bissell' <bissell@gsnh.com>; Joel Ross <jross@rossadvisory.ca>; Eric Golden <egolden@blaney.com>; Joel Turgeon <turgeon@gsnh.com>; Katie Parent <parent@gsnh.com>

Subject: RE: 2359 Danforth

Hi Chad,

I apologize for the confusion on this. There have been a flurry of emails and phone calls over the course of today and yesterday and a multitude of interested parties.

You and I have had two discussions by phone since this email exchange and I would like to summarize those calls and the intention behind my email to Mel.

I appreciate your concerns about the receivership process and getting in front of the court to appoint the receiver on Monday. I also understand from you that a plan would then be developed by a contractor (in consultation with me) to conduct the necessary work to stabilize the site. My concern is that I am trying to balance your request for a relaxation of the dates so that the receivership process can run its due course and any potential offers to develop the site can be properly vetted against my own duty to the public as a professional engineer to ensure this process is resolved as quickly as possible.

I have heard you that you need another week, but I still maintain that the last two weeks were available for the development of contractor work plans, and I'm disappointed that it didn't happen.

Given the amount of activity that has taken place today and will continue tomorrow and into the weekend, I am comfortable with extending the May 1st date to **EOD Monday, May 4th**. This will give the weekend to allow for the engagement of a contractor to develop the stabilization work plan which can then be acted upon by the appointed receiver on Monday. I am sorry but I have to express what leverage I can on this situation to ensure that it is resolved as quickly as possible, or otherwise remedied via backfilling.

Regards,

Mike Porco PEng

Principal, Geotechnical Engineering



Grounded Engineering Inc.

12 Banigan Drive, Toronto, ON M4H 1E9

mporco@groundedeng.ca | www.groundedeng.ca | 647-264-7911

From: Chad Kopach <ckopach@blaney.com>

Sent: April 30, 2020 2:58 PM

To: Mike Porco <mporco@groundedeng.ca>

Cc: 'Brendan Bissell' <bissell@gsnh.com>; Joel Ross <jross@rossadvisory.ca>; Eric Golden <egolden@blaney.com>; Joel Turgeon <turgeon@gsnh.com>; Katie Parent <parent@gsnh.com>

Subject: RE: 2359 Danforth

Mike,

Your e-mail sent today at 2:08 has been forwarded to me. This is not at all what I understood your position to be following our call at 1:00 this afternoon with Elm.

It is not helpful to anyone to have positions constantly shifting.

During our call, you advised that you would relax the May 1 date to a future date (you did not say when) if you have proof of a sale by 5:00 today.

You also advised that, given the significant interest in the property over the last week, based on the number of phone calls you have been fielding, even without an offer today, you would extend the deadline to a date next week. This would allow the Receiver to be appointed early next week, and a plan put in place to satisfy you that your safety concerns would be addressed by approximately July 31, 2020.

Your e-mail does not reflect our conversation. You require, today, either proof of a sale (which is not going to happen), or proof of an engagement to perform the work. It is not possible to give you proof of an engagement today. Mel is the first ranking lender, not the owner, and so can't engage anyone to do work at the property. A contractor can only be retained by the current owner (Moninder, also not going to happen), or possibly by a Receiver, but the Receiver can't be appointed today, and in any event will need a few days to formalize an engagement with a contractor.

The first secured lender is taking steps to have a Receivership proceeding returnable Monday in Court on an emergency basis.

A plan would then be developed by a contractor (consulting with you) early next week to get going with the necessary construction. We discussed this today, and I understood that this is why you'd be prepared today to give an extension to late next week, even if there was no firm APS by end of day today.

It's not possible to meet either condition in your e-mail of this afternoon. In the circumstances, can you please confirm in writing that you will advise the City today that you will relax the deadline to next Friday (May 8), even without the proof of a sale, or proof of a contractor being engaged?

Unfortunately, given the tight deadlines we're working towards, I need to hear from you by 3:30 this afternoon. I will also try calling you at 3:10 pm.

It seems completely unnecessary and a strain on the City of Toronto's already stretched legal resources in these Covid times if the Receivership application would also have to name the City, require its attendance in Court on Monday, and seek a stand-still Order against it. You will also have to make yourself available for the hearing on Monday if your position continues to be that infill work begins tomorrow. I trust that no steps will be taken tomorrow.

Chad Kopach

Partner

ckopach@blaney.com

☎ 416-593-2985 | ☎ 416-594-5095

From: Mike Porco <mporco@groundedeng.ca>

Sent: April 30, 2020 2:08 PM

To: meleisen@idirect.com

Subject: 2359 Danforth

Hi Mel,

Further to our past conversation, it's now April 30th and Orville Grant from Toronto Buildings has reached out to multiple times today asking about my stance towards backfilling the site starting May 1st as per the letter I sent to them on April 15th.

For me to provide a relaxation of the May 1st start date, I will require one of two scenarios as detailed below by 5pm today:

1. A purchaser is brought on board and can provide me with proof of the sale and confirmation of the closing date. The proposed developer must have the experience, knowledge, and immediate ability to carry out the work in an expedited manner. They must also understand the financial commitment they need to make in order to construct the below-grade structure, so that we do not run into the same scenario as Moninder put me in whereby he had possession of the site but no financial means to carry out the work.
2. You confirm in writing that you have engaged a reputable party to proceed with the full scope of the work plan set out in my April 15th letter, starting no later than May 15th. I would like to understand who the party is, their experience, and to have a conversation with them to confirm their ability to conduct the work.

Unfortunately I am not in a position to allow the site to remain open for one day longer than necessary at this point. I intend to send one of two letters to Toronto Buildings this evening at 5pm. If you are able to provide me with the above then I will grant a relaxation of up to May 15th. If not, I will indicate my support for Toronto Buildings to proceed with the non-tendered backfilling operation immediately.

Regards,

Mike Porco PEng

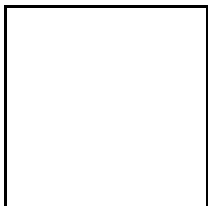
Principal, Geotechnical Engineering



Grounded Engineering Inc.

12 Banigan Drive, Toronto, ON M4H 1E9

mporco@groundedeng.ca | www.groundedeng.ca | 647-264-7911



This email has been checked for viruses by Avast antivirus software.
www.avast.com

This is **Exhibit "L"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner, etc.

NOTICE OF SALE UNDER CHARGE/MORTGAGE

TO: See Schedule "A" attached hereto and forming a part hereof

Take Notice that default has been made in payment of the monies due under a certain charge/mortgage dated the 28th day of February, 2019, made between:

DIAM DANFORTH PROPERTY INC.

MORTGAGOR

And

MELVYN EISEN, TRUSTEE AS TO 99.56%

MORTGAGEES

COMMUNITY TRUST COMPANY AS TO 0.44%

Upon the following property, namely:

Part Lots 5 S/S Danforth Ave, 6 S/S Danforth Ave, 7 S/S Danforth Ave Plan 90, Part 1 on 66R29513; City of Toronto; subject to an easement as in AT4880256; subject to an easement over part lots 5, 6 & 7 S/S Danforth Ave Plan 90 Part 1 66R-29513. Except part 1 plan 66R-30236 as in AT4966195, city of Toronto (PIN: 21014-1184)

2359 Danforth Avenue Toronto

Which charge/mortgage was registered on the 28th day of February, 2019, in the Land Titles Division of the Toronto Registry Office No. 80 as Instrument No. AT5085371.

AND I hereby give you notice that the amount now due on the Charge/Mortgage for principal money, interest, and costs, respectively, is \$11,662,601.96 made up as follows:

\$11,500,000.00	for principal
\$ 148,081.96	for interest from March 1, 2020 to April 16, 2020
\$ 4,520.00	For appraisal fee


\$10,000 for costs (Such amount for costs being up to and including the service of the notice only, and thereafter such further costs and disbursements will be charged as may be proper),

Together with interest at the rate of 10% per annum in effect from time to time calculated monthly, not in advance on the principal and interest hereinbefore mentioned from the 16th day of April 2020, to the date of payment.

AND unless the said sums are paid on or before the 26th day of May, 2020, I shall sell the property covered by the said charge/mortgage under the provisions contained in it.

This notice is given to you as you appear to have an interest in the mortgage property and may be entitled to redeem the same.

Dated this 16th day of April 2020.



 Melvyn Eisen, Trustee
 By his Solicitor, Melvyn Eisen



 Melvyn Eisen
 70 Bond Street
 Suite 200
 Toronto, Ontario
 M5B 1X3
 Tel: 416-865-5321
 Fax: 416-366-3882



 Community Trust Company
 By its Solicitor
 Melvyn Eisen

SCHEDULE A

The Guarantee Company of
North America
4950 Yonge Street
Suite 1400
Toronto Ontario
M2N 6K1

Harris Sheaffer LLP
Barristers & Solicitors
4100 Yonge Street
Suite 610
Toronto Ontario M2P 2B5
ATTN: Loraine A. Teeter

The Olympia Trust Company
125 9th Avenue SE
Suite 2200
Calgary Alberta
T2P 1C8

The Olympia Trust Company
125-9th SE
Suite 2200
Calgary Alberta
T2G 0P6

RZCD Law Firm LLP
Barristers & Solicitors
77 City Centre Drive
Mississauga Ontario L5B 1M5
ATTN: Dilreet S. Dandiwal

Thrive Capital Management
Limited
38 Autumn Olive Way
Brampton Ontario
L6P 4L3

TSC Law Professional Corporation
Barristers & Solicitors
20 Maritime Blvd.
Suite 215
Brampton Ontario L6S 0E7
ATTN: Balpreet S. Boparai

Thomas M. Sheppard
Barrister & Solicitor
488 Huron Street
Toronto Ontario
M5R 2R3
ATTN: Tom Sheppard

Gillam Group Ltd.
36 Northline Road
Unit 3
Toronto Ontario M4B 3E2
ATTN: Marcus Gillam

Dentons Canada LLP
Barristers & Solicitors
77 King Street West
Suite 400
Toronto Ontario M5K 0A1
ATTN: Christine Naycalo

Dentons Canada LLP
Barristers & Solicitors
77 King Street West
Suite 400
Toronto Ontario M5K 0A1
ATTN: Karen Groulx

Cope Project Management Corp.
457A Danforth Avenue
Toronto Ontario M4K 1P1
ATTN: Miles Cope

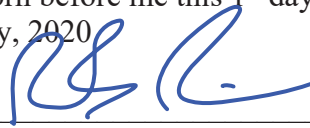
Wilson Vukelich LLP
Barristers & Solicitors
60 Columbia Way
Suite 710
Markham Ontario L3R 0C9
ATTN: Ivka Starcevic

DIAM Danforth Property Inc.
85 Prologis Blvd. Suite 1
Mississauga Ontario L5W 0G4
ATTN: Moninder Khudal

DIAM Danforth Property Inc.
2359 Danforth Avenue
Toronto Ontario M4C 1K8
ATTN: Moninder Khudal

DIAM Danforth Property Inc.
199 Advance Blvd.
Suite 212
Brampton Ontario L6T 4N2
ATTN: Moninder Khudal

This is **Exhibit "M"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner, etc.



JOËL TURGEON for
R. BRENDAN BISSELL
Direct Dial: 416-597-6489
Email: bissell@gsnh.com

dedicated to your success

April 23, 2020

BY REGISTERED MAIL AND COURIER

DIAM DANFORTH PROPERTY INC.

85 Prologis Boulevard, suite 1 2359 Danforth Avenue 199 Advance Blvd, suite 212
Mississauga (ON), L5W 0G4 Toronto (ON), M4C 1K8 Brampton (ON), L6T 4N2

Attention: Moninder Khudal

Dear Mr. Khudal:

RE: Default by DIAM Danforth Property Inc. (the “Debtor”) of its obligations to Melvyn Eisen, trustee, and Community Trust Company (collectively, the “Mortgagees”)

We are the solicitors for the Mortgagees and we are advised by the Mortgagees that the Debtor is in default to pay amounts due to the Mortgagees (collectively, the “**Amount Due**”) under the charge/mortgage dated February 28, 2019 between the Debtor and the Mortgagees (the “**Mortgage**”) upon the land located at the municipal address 2359 Danforth Avenue, Toronto, formally described in **Schedule “A”** hereto (the “**Property**”), and registered against the Property on February 28, 2019, in the Land Titles Division of the Toronto Registry Office (No. 80) as Instrument No. AT5085371.

We are advised by the Mortgagees that as of the date hereof the Amount Due is, in accordance with the Mortgage, **\$11,666,985.75**, being \$11,500,000 in principal, \$166,985.75 for interests from March 1, 2020 to April 24, 2020, \$4,520 for appraisal costs, and \$15,000 for the amounts, including any taxes, of such reasonable costs and disbursements incurred by the Mortgagees in respect of the Debtor's defaults under the Mortgage.

On behalf of the Mortgagees, **we hereby demand that you pay the Amount Due to the Mortgagees by certified cheque on or before 5:00 p.m. on May 5, 2020.** If you do not we are instructed to then proceed immediately with all remedies available to the Mortgagees without further notice to you except as may be required at law, including against you, Mr. Khudal, as guarantor under the Mortgage.

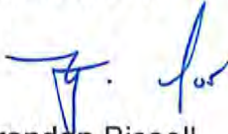
We hereby enclose and serve upon you a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**Act**").

The Mortgagees reserve any right to seek the appointment of an interim receiver pursuant to the *Act* on or prior to May 5, 2020.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:

A handwritten signature in blue ink, appearing to read 'R. Bissell', is written over the printed name.

R. Brendan Bissell

RBB/jt

Encl.

FORM 86

NOTICE OF INTENTION TO ENFORCE SECURITY*(Subsection 244(1) Bankruptcy and Insolvency Act)*TO: DIAM DANFORTH PROPERTY INC., an insolvent corporation (the "**Debtor**"),**TAKE NOTICE THAT:**

1. Melvyn Eisen and Community Trust Company, secured creditors, intend to enforce together their security on the property of the Debtor described in **Schedule "A"** (the "**Property**").
2. The security that is to be enforced is in the form of a Charge/Mortgage of Land securing the principal sum of \$11,500,000 registered in the Land Registry Office for Toronto No. 80 (the "**Registry Office**") on February 28, 2019 as Instrument No. AT5085371 on the title to the Property.
3. The total amount of the indebtedness secured by the security is the sum of **(i)** \$11,666,985.75, being \$11,500,000 in principal, \$166,985.75 for interests from March 1, 2020 to April 24, 2020, \$4,520 for appraisal costs, and \$15,000 for costs and disbursements including all taxes thereon, and **(ii)** interests on said principal and interests at the rate of 10% per year from and after April 24, 2020, calculated monthly.
4. The secured creditors will not have the right to enforce their security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Toronto, this 23rd day of April, 2020.

Melvyn Eisen and Community Trust Company
by their solicitors
GOLDMAN SLOAN NASH & HABER LLP

Per: _____


Brendan Bissell
Goldman Sloan Nash & Haber LLP
Barristers & Solicitors
1600-480 University Avenue
Toronto, Ontario M5G 1V2

This Notice is a required document under the Bankruptcy & Insolvency Act ("Act"). The use of the word "insolvent" is prescribed by the Act but nothing herein shall be deemed to imply that any person to whom this Notice is delivered is, in fact insolvent.

Schedule "A" – Formal Description of the Property

PIN 21014-1184LT – PART LOTS 5 SIS DANFORTH AV, 6 SIS DANFORTH AV, 7 SIS DANFORTH AV PLAN 90, PART 1 ON PLAN 66R29513; SUBJECT TO AN EASEMENT AS IN AT4880256; SUBJECT TO AN EASEMENT OVER PART LOTS 5, 6 & 7 SIS DANFORTH AV PLAN 90 PART 1 PLAN 66R29513, EXCEPT PART 1 PLAN 66R30236 AS IN AT4966195; CITY OF TORONTO



JOËL TURGEON for
R. BRENDAN BISSELL
Direct Dial: 416-597-6489
Email: bissell@gsnh.com

dedicated to your success

April 23, 2020

BY REGISTERED MAIL AND COURIER

DIAM DANFORTH PROPERTY INC.

85 Prologis Boulevard, suite 1 2359 Danforth Avenue 199 Advance Blvd, suite 212
Mississauga (ON), L5W 0G4 Toronto (ON), M4C 1K8 Brampton (ON), L6T 4N2

Attention: Moninder Khudal

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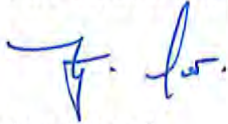
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The Mortgagees reserve any right to seek the appointment of an interim receiver pursuant to the *Act* on or prior to May 5, 2020.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:

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R. Brendan Bissell

RBB/jt

Encl.

FORM 86

NOTICE OF INTENTION TO ENFORCE SECURITY

(Subsection 244(1) Bankruptcy and Insolvency Act)

TO: DIAM DANFORTH PROPERTY INC., an insolvent corporation (the "**Debtor**"),

TAKE NOTICE THAT:

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4. The secured creditors will not have the right to enforce their security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Toronto, this 23rd day of April, 2020.

Melvyn Eisen and Community Trust Company
by their solicitors
GOLDMAN SLOAN NASH & HABER LLP

Per: _____

 
Brendan Bissell
Goldman Sloan Nash & Haber LLP
Barristers & Solicitors
1600-480 University Avenue
Toronto, Ontario M5G 1V2

This Notice is a required document under the Bankruptcy & Insolvency Act ("Act"). The use of the word "insolvent" is prescribed by the Act but nothing herein shall be deemed to imply that any person to whom this Notice is delivered is, in fact insolvent.

Schedule "A" – Formal Description of the Property

PIN 21014-1184LT – PART LOTS 5 SIS DANFORTH AV, 6 SIS DANFORTH AV, 7 SIS DANFORTH AV PLAN 90, PART 1 ON PLAN 66R29513; SUBJECT TO AN EASEMENT AS IN AT4880256; SUBJECT TO AN EASEMENT OVER PART LOTS 5, 6 & 7 SIS DANFORTH AV PLAN 90 PART 1 PLAN 66R29513, EXCEPT PART 1 PLAN 66R30236 AS IN AT4966195; CITY OF TORONTO



JOËL TURGEON for
R. BRENDAN BISSELL
Direct Dial: 416-597-6489
Email: bissell@gsnh.com

dedicated to your success

April 23, 2020

BY REGISTERED MAIL AND COURIER

DIAM DANFORTH PROPERTY INC.

85 Prologis Boulevard, suite 1 2359 Danforth Avenue 199 Advance Blvd, suite 212
Mississauga (ON), L5W 0G4 Toronto (ON), M4C 1K8 Brampton (ON), L6T 4N2

Attention: Moninder Khudal

Dear Mr. Khudal:

RE: Default by DIAM Danforth Property Inc. (the “Debtor”) of its obligations to Melvyn Eisen, trustee, and Community Trust Company (collectively, the “Mortgagees”)

We are the solicitors for the Mortgagees and we are advised by the Mortgagees that the Debtor is in default to pay amounts due to the Mortgagees (collectively, the “**Amount Due**”) under the charge/mortgage dated February 28, 2019 between the Debtor and the Mortgagees (the “**Mortgage**”) upon the land located at the municipal address 2359 Danforth Avenue, Toronto, formally described in **Schedule “A”** hereto (the “**Property**”), and registered against the Property on February 28, 2019, in the Land Titles Division of the Toronto Registry Office (No. 80) as Instrument No. AT5085371.

We are advised by the Mortgagees that as of the date hereof the Amount Due is, in accordance with the Mortgage, **\$11,666,985.75**, being \$11,500,000 in principal, \$166,985.75 for interests from March 1, 2020 to April 24, 2020, \$4,520 for appraisal costs, and \$15,000 for the amounts, including any taxes, of such reasonable costs and disbursements incurred by the Mortgagees in respect of the Debtor's defaults under the Mortgage.

On behalf of the Mortgagees, **we hereby demand that you pay the Amount Due to the Mortgagees by certified cheque on or before 5:00 p.m. on May 5, 2020.** If you do not we are instructed to then proceed immediately with all remedies available to the Mortgagees without further notice to you except as may be required at law, including against you, Mr. Khudal, as guarantor under the Mortgage.

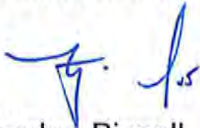
We hereby enclose and serve upon you a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**Act**").

The Mortgagees reserve any right to seek the appointment of an interim receiver pursuant to the *Act* on or prior to May 5, 2020.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:



R. Brendan Bissell

RBB/jt

Encl.

FORM 86

NOTICE OF INTENTION TO ENFORCE SECURITY

(Subsection 244(1) Bankruptcy and Insolvency Act)

TO: DIAM DANFORTH PROPERTY INC., an insolvent corporation (the "**Debtor**"),

TAKE NOTICE THAT:

1. Melvyn Eisen and Community Trust Company, secured creditors, intend to enforce together their security on the property of the Debtor described in **Schedule "A"** (the "**Property**").
2. The security that is to be enforced is in the form of a Charge/Mortgage of Land securing the principal sum of \$11,500,000 registered in the Land Registry Office for Toronto No. 80 (the "**Registry Office**") on February 28, 2019 as Instrument No. AT5085371 on the title to the Property.
3. The total amount of the indebtedness secured by the security is the sum of **(i)** \$11,666,985.75, being \$11,500,000 in principal, \$166,985.75 for interests from March 1, 2020 to April 24, 2020, \$4,520 for appraisal costs, and \$15,000 for costs and disbursements including all taxes thereon, and **(ii)** interests on said principal and interests at the rate of 10% per year from and after April 24, 2020, calculated monthly.
4. The secured creditors will not have the right to enforce their security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Toronto, this 23rd day of April, 2020.

Melvyn Eisen and Community Trust Company
by their solicitors
GOLDMAN SLOAN NASH & HABER LLP

Per: _____

 
Brendan Bissell
Goldman Sloan Nash & Haber LLP
Barristers & Solicitors
1600-480 University Avenue
Toronto, Ontario M5G 1V2

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Schedule "A" – Formal Description of the Property

PIN 21014-1184LT – PART LOTS 5 SIS DANFORTH AV, 6 SIS DANFORTH AV, 7 SIS DANFORTH AV PLAN 90, PART 1 ON PLAN 66R29513; SUBJECT TO AN EASEMENT AS IN AT4880256; SUBJECT TO AN EASEMENT OVER PART LOTS 5, 6 & 7 SIS DANFORTH AV PLAN 90 PART 1 PLAN 66R29513, EXCEPT PART 1 PLAN 66R30236 AS IN AT4966195; CITY OF TORONTO

This is **Exhibit "N"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner, etc.

Brendan Bissell

From: Calvin Ho <cho@laisyreed.com>
Sent: Friday, April 24, 2020 1:28 PM
To: Brendan Bissell
Cc: Chris E. Reed
Subject: FW: DIAM Danforth Property Inc.


Hi Brendan,

Please see attached a copy of our client's signed consent. It came through via phone as their printer was not working. We can deliver a cleaner copy and/or the original to you at a future date.

Diam Danforth Property Inc. hereby consents to the immediate enforcement of the security held by Melvyn Eisen and Community Trust Company as set out in their Notice of Intention to Enforce Security dated April 23, 2020..

Dated: April 24th, 2020

DIAM DANFORTH PROPERTY INC.

Per: 
Name: MONINDER KHUDAL
Title: PRESIDENT

This is **Exhibit "O"** to the
Affidavit of Melvyn Eisen,
sworn before me this 1st day of
May, 2020

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'M.E.' followed by a flourish.

A Commissioner, etc.



TAX CERTIFICATE

5100 Yonge Street, Toronto ON M2N 5V7
Tel: 311 Outside city limits: (416) 392-CITY (2489) Fax: (416) 696-3640
(UNDER SECTION 352 OF THE MUNICIPAL ACT, 2001 S.O. 2001, C. 25 AND
SECTION 317 OF THE CITY OF TORONTO ACT, 2006, S.O. 2006, C. 11)

Assessment Roll Number
19-04-09-5-440-00300-0000-0 5

Issued to:
Blaney McMurtry LLP
Dawn Kearns
1500 - 2 Queen Street East
Toronto ON M5C4G5

DESCRIPTION OF PROPERTY	
2359 DANFORTH AVE PLAN 90 PT LOTS 5 TO 7 RP 63R4881 PART 1	

Your Ref. No.: 201157-0001
Statement Showing Taxes as at: April 27, 2020

TAX SUMMARY		
2019	Taxes	69,780.68
2020	Interim	34,890.34

MESSAGES

OUTSTANDING TAXES

Year	Description	Taxes	Interest	Fees	Total	Related Roll Number
2020	Real Estate 2020	11,630.34	145.38	18.37	11,794.09	
	Total:	11,630.34	145.38	18.37	11,794.09	

Important Notice: PLEASE ADVISE YOUR CLIENT OF TAXES NOT YET DUE

FUTURE INSTALLMENTS

Due Date	Amount Due	Description	Related Roll Number
June 01, 2020	11,630.00	Real Estate 2020	
July 02, 2020	11,630.00	Real Estate 2020	
Total:	23,260.00		

Cut Here



CHANGE OF OWNERSHIP NOTICE

RCS-G16

Return To: City Of Toronto
Revenue Services
PO Box 4300, STN A
Toronto ON M5W 3B5
Fax: (416) 696-3640

Assessment Roll Number
19-04-09-5-440-00300-0000-0 5

Issued to:
Blaney McMurtry LLP
Dawn Kearns
1500 - 2 Queen Street East
Toronto ON M5C4G5

Your Ref. No.: 201157-0001

DESCRIPTION OF PROPERTY
2359 DANFORTH AVE PLAN 90 PT LOTS 5 TO 7 RP 63R4881 PART 1
MESSAGES

CHANGES	
Owner(s)	Surname _____ Given Name _____
	Surname _____ Given Name _____
	Surname _____ Given Name _____
Mailing Address	_____

Postal Code	_____
Property Address	_____

***** PLEASE RETURN THIS PART OF THE FORM AFTER THE DATE OF CLOSING - THANK YOU ****

Closing Date _____

Signature _____



TAX CERTIFICATE

5100 Yonge Street, Toronto ON M2N 5V7
Tel: 311 Outside city limits: (416) 392-CITY (2489) Fax: (416) 696-3640
(UNDER SECTION 352 OF THE MUNICIPAL ACT, 2001 S.O. 2001, C. 25 AND SECTION 317 OF THE CITY OF TORONTO ACT, 2006, S.O. 2006, C. 11)

Assessment Roll Number
19-04-09-5-440-00300-0000-0 5

Issued to:
Blaney McMurtry LLP
Dawn Kearns
1500 - 2 Queen Street East
Toronto ON M5C4G5

Table with 1 column: DESCRIPTION OF PROPERTY. Content: 2359 DANFORTH AVE, PLAN 90 PT LOTS 5 TO 7 RP, 63R4881 PART 1

Your Ref. No.: 201157-0001
Statement Showing Taxes as at: April 27, 2020

Table with 3 columns: Year, Tax Type, Amount. Content: 2019 Taxes 69,780.68, 2020 Interim 34,890.34

I hereby certify that the above statement shows all arrears of taxes (prior years) and unpaid current year's taxes against the above lands, and proceedings have not been commenced under the Municipal Tax Sales Act, 1990 or the Municipal Act, 2001, S.O. 2001, C.25, as amended and the City of Toronto Act 2006 S.O. 2006, C.11, unless otherwise indicated below.

THIS CERTIFICATE IS ISSUED SUBJECT TO CHEQUES TENDERED IN PAYMENT OF TAXES BEING HONOURED BY THE BANK FEE PAID 70.02 for each separate parcel

Handwritten signature of Andrew Flynn

Andrew Flynn
Controller, City of Toronto

Important Notes:

- 1. This Certificate covers levied Tax Arrears or Current Taxes.
2. There are a variety of services which may be added to the Collector's Roll and collected as Taxes.
3. The amount of the levy does not include subsequent supplementary taxes that may be levied and added pursuant to Section 33 and 34 of the Assessment Act, R.S.O. 1990, as amended, nor does it include adjustments that may be made pursuant to Sections 357, 358 and 359 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, Sections 323, 325 and 326 of the City of Toronto Act, 2006, S.O. 2006, C. 11, Section 40 of the Assessment Act, R.S.O. as amended, or any legislative amendments that provide for further adjustments.
4. This Certificate is exclusive of any Local Improvement charges that have not been added to the Collector's Roll at the date of this Certification.
5. This certificate is subject to any apportionment which may be made pursuant to Section 356 of the Municipal Act, 2001, S.O. 2001, c.25, as amended or Section 322 of the City of Toronto Act, 2006, S.O. 2006, C. 11.
6. This certificate is subject to any phase-in/capping recalculation made pursuant to Section 318 of the Municipal Act, 2001, S.O. 2001, c.25, as amended or Section 282 of the City of Toronto Act, 2006, S.O. 2006, C. 11.
7. An administrative fee will be added to the account when there is an ownership transfer. For more information please visit our website at www.toronto.ca/taxes/property_tax and click to our fees page for current charges.



CHANGE OF OWNERSHIP NOTICE

Cut Here
RCS-G16

Return To: City Of Toronto
Revenue Services
PO Box 4300, STN A
Toronto ON M5W 3B5
Fax: (416) 696-3640

Assessment Roll Number
19-04-09-5-440-00300-0000-0 5

Issued to:
Blaney McMurtry LLP
Dawn Kearns
1500 - 2 Queen Street East
Toronto ON M5C4G5

Your Ref. No.: 201157-0001

Form with sections: DESCRIPTION OF PROPERTY (2359 DANFORTH AVE, PLAN 90 PT LOTS 5 TO 7 RP, 63R4881 PART 1) and MESSAGES.

Form with section: CHANGES. Fields include Owner(s) (Surname, Given Name), Mailing Address, Postal Code, and Property Address.

*** PLEASE RETURN THIS PART OF THE FORM AFTER THE DATE OF CLOSING - THANK YOU **

Closing Date

Signature

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*
BETWEEN MELVYN EISEN, TRUSTEE, APPLICANT, AND DIAM
DANFORTH PROPERTY INC., RESPONDENT**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

AFFIDAVIT OF Melvyn Eisen
(sworn May 1, 2020)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (Student-at-Law)

Lawyers for the Applicant, Melvyn Eisen, trustee

TAB 3

Court File No. CV-20-

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MELVYN EISEN, TRUSTEE

Applicant

- and -

DIAM DANFORTH PROPERTY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

CONSENT

ROSEN GOLDBER INC. hereby consents to act as the court-appointed receiver of the Applicant in connection with its proceedings pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. 43 and pursuant to the terms of an order substantially in the form filed.

DATED this 15th day of May, 2020

ROSEN GOLDBERG INC.

Per: 

Name: Brahm Rosen
Title: President

Court File No. CV-20-00639897-00CL

MELVYN EISEN

DIAM Danforth Property Inc.

- and -

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

CONSENT TO ACT

GOLDMAN SLOAN NASH & HABER LLP
Barristers & Solicitors
480 University Avenue, Suite 1600
Toronto, Ontario
M5G 1V2

R. Brendan Bissell [LSO No. 40354V]
Email: bissell@gsnh.com
Tel: (416) 597-6489
Fax: (416) 597-3370

Lawyers for the Applicant, Melvyn Eisen

TAB 4

~~Revised: January 21, 2014~~
~~s.243(1) BIA (National Receiver) and s.101 CJA (Ontario) Receiver~~

Court File No. ~~_____~~ CV-20-00640347-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~_____~~ MR.) ~~WEEKDAY~~ MONDAY, THE #4TH
JUSTICE ~~_____~~ KOEHNEN) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2020

~~PLAINTIFF~~[†]

~~Plaintiff~~

MELVYN EISEN, TRUSTEE

Applicant

- and -

~~DEFENDANT~~

~~Defendant~~

DIAM DANFORTH PROPERTY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

**ORDER
(appointing Receiver)**

[†]~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS MOTION made by the ~~Plaintiff~~²Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "~~“BIA”~~") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "~~“CJA”~~") appointing ~~[RECEIVER'S NAME]~~Rosen Goldberg Inc. as receiver ~~[and manager]~~ (in such capacities, the "~~Receiver~~") ~~without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME]~~“Receiver”) ~~without security, of the real property known as 2359 Danforth Avenue, Toronto, ON M4C 1K8, and bearing parcel identification number 21014-1184 (LT) in the Land Titles Division of the Land Registry Office of Toronto (No. 066) (hereinafter referred to as the “Real Property”)~~ and all other property, assets, undertakings of DIAM Danforth Property Inc. (the "~~Debtor~~") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Melvyn Eisen sworn ~~[DATE]~~May 1, 2020 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant, and all other counsel listed on the counsel slip, no one appearing for ~~[NAME]~~any other person on the service list, although duly served as appears from the affidavit of service of ~~[NAME]~~• sworn ~~[DATE]~~•, 2020 and on reading the consent of ~~[RECEIVER'S NAME]~~Rosen Goldberg Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~Rosen Goldberg Inc. is hereby appointed Receiver, without

²Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

³If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.

security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over ~~the Property and~~ any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$,100,000.00 provided that the aggregate consideration for all such transactions does not exceed \$;500,000.00 and

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

⁵~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that, without further Court Order, the Receiver shall not take possession of the Real Property, and shall not be deemed to have done so, by exercising any of the powers conferred in paragraph 3, including without limitation the retainer if necessary of one or more contractors to enter on to the Real Property and provide materials or services to the Real Property.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. ~~4.~~ **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use

of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. ~~6.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. — THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

~~⁶Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~100,000.00~~ 100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **"Receiver's Borrowings Charge"**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule **"A"** hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the **"Protocol"**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~<https://w>

www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/ shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.rosengoldberg.comcurrent-files.php.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **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.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the PlaintiffApplicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the PlaintiffApplicant's security or, if not so provided by the PlaintiffApplicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that ~~[RECEIVER'S NAME]~~ Rosen Goldberg Inc., the receiver (the ~~"Receiver"~~ "Receiver") of certain real property registered on title as being owned by DIAM Danforth Property Inc. (the "Debtor") and that is listed on Schedule "A" hereto (collectively, the "Real Property") and all of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of the Debtor acquired for, or used in relation to ~~a business carried on by the Debtor, including all proceeds thereof (collectively~~ the Real Property (together with the Real Property, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the fourth day of May, 2020 (the "Order") made in an action having Court file number ~~CL~~ CV-20-00640347-00CL has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME]~~ ROSEN GOLDBERG
INC., solely in its capacity as Receiver of the
Property, and not in its personal capacity

Per: _____
Name:
Title:

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT* BETWEEN MELVYN EISEN, TRUSTEE, APPLICANT, AND DIAM DANFORTH PROPERTY INC., RESPONDENT

Court File No. CV-20-00640347-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

ORDER
(appointing Receiver)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

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Joël Turgeon (Student-at-Law)

Lawyers for the Applicant, Melvyn Eisen, Tru

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Description	model-receivership-order-EN (1)
Document 2 ID	file:///U:\BBissell\Eisen, Mel re Diam Danforth - 102058.0001\Pleadings\Receivership Application\Receivership Order v.2.docx
Description	Receivership Order v.2
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	109
Deletions	112
Moved from	0

TAB 5

Court File No. CV-20-00640347-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT***

B E T W E E N:

MELVYN EISEN, TRUSTEE

Applicant

- and -

DIAM DANFORTH PROPERTY INC.

Respondent

SERVICE LIST
(as at May 1, 2020)

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<p>COPE PROJECT MANAGEMENT CORP. 457A Danforth Ave. Toronto, ON M4K 1P1</p> <p>Miles Cope Email: miles@copedevcorp.com Tel: 905-339-5115</p> <p>Construction Lien Claimant</p>	<p>THE OLYMPIA TRUST COMPANY 125 9th Avenue SE Suite 2200 Calgary, AB T2G 0P6</p> <p>Email: DragoescuM@olympiatruster.com</p>

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IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT* BETWEEN MELVYN EISEN, TRUSTEE, APPLICANT, AND DIAM DANFORTH PROPERTY INC., RESPONDENT

Court File No. CV-20-00640347-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

APPLICATION RECORD
(returnable May 4, 2020)

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Joël Turgeon (Student-at-Law)

Lawyers for the Applicant, Melvyn Eisen, Trustee