

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 4TH

JUSTICE McEWEN

)

DAY OF JUNE, 2019

)



AM-STAT CORPORATION

Applicant

- and -

6910 HWY7 INC. and 6910 HIGHWAY SEVEN LIMITED PARTNERSHIP

Respondents

**ORDER
(Appointing Sales Officer)**

THIS APPLICATION made by the Applicant Am-Stat Corporation for an Order appointing Rosen Goldberg Inc. as sales officer (in such capacities, the “Sales Officer”) without security, of all of the assets, undertakings and properties of the Respondents 6910 Hwy7 Inc. and 6910 Highway Seven Limited Partnership (collectively, the “Respondents”), was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Affidavit of Philip H. Meretsky, Q.C. sworn May 1, 2019 and the Exhibits thereto and the Affidavit of Patrick Chan sworn May 16, 2019 and the Exhibits thereto on hearing the submissions of counsel for the Applicant, also appearing as agent for counsel for each of the Respondents, 2563111 Ontario Inc., 2334266 Ontario Inc. and Simon Kronenfeld, on

reading the consent of Rosen Goldberg Inc. to act as the Sales Officer and on being advised of the consent of each of the Respondents, 2563111 Ontario Inc., 2334266 Ontario Inc. and Simon Kronenfeld to the within Order, no one else on the service list appearing, although served as appears from the Affidavit of Service of Laura Micoli sworn May 2, 2019

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that 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, Rosen Goldberg Inc. is hereby appointed Sales Officer, without security, of all of the assets, undertakings and properties of the Respondents, including the lands and premises legally described in Schedule "A" hereto, and all proceeds thereof (the "Property").

SALES OFFICER'S POWERS

3. THIS COURT ORDERS that the Sales Officer 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 Sales Officer is hereby expressly empowered and authorized to do any of the following where the Sales Officer 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 enter into any agreements in relation to the Property, incur any obligations in the ordinary course of business in relation to the Property, or cease to perform any contracts of the Respondents in relation to the Property;

- (c) to engage consultants, appraisers, agents, experts, accountants, 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 Sales Officer's powers and duties, including without limitation those conferred by this Order;
- (d) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Sales Officer's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (e) 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 Sales Officer in its discretion may deem appropriate;
- (f) with the approval of this Court, to sell, convey, transfer, or assign the Property or any part or parts thereof out of the ordinary course of business, 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;
- (g) 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;
- (h) to report to, meet with and discuss with such affected Persons (as defined below) as the Sales Officer deems appropriate on all matters relating to the Property and the Sales Officer's administration, and to share information, subject to such terms as to confidentiality as the Sales Officer deems advisable;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (j) 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 Sales Officer, in the name of the Respondents; and
- (k) 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 Sales Officer 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 Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE SALES OFFICER

4. THIS COURT ORDERS that (i) the Respondents, (ii) all of their 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 Sales Officer of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Sales Officer, and shall deliver all such Property to the Sales Officer upon the Sales Officer's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Sales Officer 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 Respondents, 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 Sales Officer or permit the Sales Officer to make, retain and take away copies thereof and grant to the Sales Officer 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 Sales Officer due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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 Sales Officer for the purpose of allowing the Sales Officer 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 Sales Officer in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Sales Officer. Further, for the purposes of this paragraph, all Persons shall provide the Sales Officer with all such assistance in gaining immediate access to the information in the Records as the Sales Officer may in its discretion require including providing the Sales Officer with instructions on the use of any computer or other system and providing the Sales Officer 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 SALES OFFICER

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

NO PROCEEDINGS AGAINST THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Sales Officer, or affecting the Property, are hereby stayed and suspended except with the written consent of the Sales Officer 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 Sales Officer or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Sales Officer or the Respondents 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 SALES OFFICER

10. 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 Respondents, without written consent of the Sales Officer or leave of this Court.

SALES OFFICER TO HOLD FUNDS

11. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Sales Officer 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 Sales Officer (the “Post Appointment Accounts”) and the monies standing to the credit of such Post Appointment Accounts from time to time, net of any disbursements provided for herein, shall be held by the Sales Officer to be paid in accordance with the terms of this Order or any further Order of this Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

12. THIS COURT ORDERS that nothing herein contained shall require the Sales Officer 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 Sales Officer from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Sales Officer shall not, as a result of this Order or anything done in pursuance of the Sales Officer’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 SALES OFFICER’S LIABILITY

13. THIS COURT ORDERS that the Sales Officer 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 Sales Officer by section 14.06 of the BIA or by any other applicable legislation.

SALES OFFICER’S ACCOUNTS

14. THIS COURT ORDERS that the Sales Officer and counsel to the Sales Officer 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 Sales Officer and counsel to the Sales Officer shall be entitled to and are hereby granted a charge (the “Sales Officer’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 Sales Officer’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.

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

16. THIS COURT ORDERS that prior to the passing of its accounts, the Sales Officer 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 Sales Officer or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE SALES OFFICER'S ADMINISTRATION

17. THIS COURT ORDERS that the Sales Officer 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 \$500,000.00 (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 Sales Officer 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 "Sales Officer'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 Sales Officer's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

20. THIS COURT ORDERS that the monies from time to time borrowed by the Sales Officer pursuant to this Order or any further order of this Court and any and all Sales Officer'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 Sales Officer's Certificates.

SERVICE AND NOTICE

21. 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/>) 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:
[http://www.rosengoldberg.com/\]www.rosengoldberg.com/admin/companyview.php?company_id=52](http://www.rosengoldberg.com/]www.rosengoldberg.com/admin/companyview.php?company_id=52).

22. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sales Officer 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 Respondents’ creditors or other interested parties at their respective addresses as last shown on the records of the Respondents 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

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

24. 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 Sales Officer 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 Sales Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Sales Officer and its agents in carrying out the terms of this Order.

25. THIS COURT ORDERS that the Sales Officer 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 Sales Officer 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.

26. THIS COURT ORDERS that the Applicant shall have its costs of this application, 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 Sales Officer from the Respondents' estates with such priority and at such time as this Court may determine.

27. 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 Sales Officer 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.



ENTERED AT - ENREG - À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 04 2019

PER / PAR 

SCHEDULE "A"
LANDS AND PREMISES

<i>PIN</i>	70013-0216 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 11 CON 9 MARKHAM; PT LT 12 CON 9 MARKHAM AS IN R436658; MARKHAM		
<i>Address</i>	6920 HIGHWAY NO. 7 EAST MARKHAM		

<i>PIN</i>	70013-0215 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 11 CON 9 PT LT 12 CON 9 MARKHAM AS IN R517792; MARKHAM		
<i>Address</i>	6950 HIGHWAY NO. 7 EAST MARKHAM		

SCHEDULE "B"

SALES OFFICER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the sales officer (the "Sales Officer") of the assets, undertakings and properties 6910 Hwy7 Inc. and 6910 Highway Seven Limited Partnership (collectively, the "Respondents") acquired for, or used in relation to a business carried on by the Respondents, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 23rd day of May, 2019 (the "Order") made in an application having Court file number CV-19-619158-00CL, has received as such Sales Officer from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Sales Officer 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 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.

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 Sales Officer 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 Sales Officer 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 Sales

Officer 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 Sales Officer to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Sales Officer 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 _____, 2019.

Rosen Goldberg Inc., solely in its capacity
as Sales Officer of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

AM-STAT CORPORATION
Applicant

-and- **6910 HWY7 INC. et al**
Respondents

Court File No. CV-19-619158-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Sales Officer)

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