

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

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

B E T W E N:

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

-and-

189 DUNDAS STREET WEST INC.

Respondent

MOTION RECORD

July 12, 2019

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- 2 First Report of Rosen Goldberg Inc. dated July 11, 2019
- A. Appendix "A" Order of Justice McEwen dated May 3, 2019

CONFIDENTIAL APPENDICES

- 1 Confidential Appraisal as of May 9, 2019 prepared by Colliers International Advisors Inc.
Appendix "1"

Court File No. CV-18-601159-CL

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

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

B E T W E N:

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

-and-

189 DUNDAS STREET WEST INC.

Respondent

NOTICE OF MOTION

Rosen Goldberg Inc., in its capacity as Court-Appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of the Respondent, 189 Dundas Street West Inc. (the “**Debtor**”), will make a Motion to a Judge of the Commercial List on a date to be scheduled at a Chambers Appointment on Wednesday, July 17, 2019, at 9:30 a.m., or as soon after that time as the matter can be heard at 330 University Avenue, in Toronto, Ontario.

METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, if necessary, abridging the time for service, permitting substituted service or dispensing with service of the within motion;
2. An Order approving the marketing and sale process for the assets under the Receiver's administration, as proposed in the Receiver's First Report dated July 11, 2019;
3. An Order approving the activities of the Receiver set out in the First Report;
4. An Order sealing Confidential Appendix 1 to the First Report, pending completion of the sale of the Debtor's assets by the Receiver; and
5. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The marketing and sale process proposed by the Receiver is commercially reasonable and will maximize realization for the benefit of all stakeholders;
2. The Receiver has acted honestly, in good faith, and in a commercially reasonable; and
3. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. First Report of the Receiver dated July 11, 2019, and the Appendices thereto; and

2. Such further and other material as counsel may advise and this Honourable Court deems just.

July 12, 2019

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WEST END MOTORS AND TRAILER PARK LIMITED
Applicant

-and-

189 DUNDAS STREET WEST INC.
Respondent

Court File No. CV-18-601159-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-601159-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

BETWEEN:

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

-and-

189 DUNDAS STREET WEST INC.

Respondent

FIRST REPORT OF ROSEN GOLDBERG INC.

July 11, 2019



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

I INTRODUCTION

1. By Order of the Honourable Mr. Justice McEwen dated May 3, 2019, Rosen Goldberg Inc. was appointed as receiver (the “**Receiver**”) of lands and premises registered in the name of the Respondent 189 Dundas Street West Inc. (the “**Debtor**”) municipally known as 189 Dundas Street West in Mississauga, Ontario (the “**Real Property**”) and the remaining assets and undertaking acquired for or used in relation to the Real Property (collectively with the Real Property, the “**Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, and section 101 of the *Courts of Justice Act*. A copy of the Order is attached as **Appendix “A”** to this First Report.

II TERMS OF REFERENCE

2. In preparing this First Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this First Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
3. The purpose of this First Report is to recommend and seek approval of the marketing and sale process hereinafter described in respect of the Real Property and to recommend that an appraisal of the Real Property recently commissioned by the Receiver from Colliers International Realty Advisors Inc. (“**Colliers**”) be sealed until the Real Property is sold.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

III BACKGROUND

4. The Real Property consists of 3.486 acres of vacant land improved with an abandoned automotive shop and is located on the north side of Dundas Street West, west of Confederation Parkway. The Debtor acquired the Real Property on February 9, 2017. There does not appear to have been any progress in developing the Property since that time.
5. The Applicant West End Motors and Trailer Park Limited (the "**First Mortgagee**") holds a first-ranking vendor-take-back mortgage over the Real Property in the principal face amount of \$9 million. According to a notice of sale issued under the first mortgage, as of May 19, 2018 the sum of \$9,111,250 was due and owing. The Receiver understands that no payments have been received since that time. Interest has been accruing and continues to accrue at 4.5% *per annum*.
6. Quincy Investments Limited, 969592 Ontario Limited, 969593 Ontario Limited, Sasso Auto Consulting Inc., Fort I Inc., David Marc Doubilet, Angelo Grossi and Gus Stamatiou (collectively, the "**Second Mortgagee**") hold a second-ranking mortgage over the Real Property in the principal face amount of \$5.7 million. According to a notice of sale issued under the second mortgage, as of June 19, 2018 the sum of \$4,757,952.29 was due and owing with interest accruing thereon at 30% *per annum*. The Receiver understands that no payments have been received by the Second Mortgagee since that time.
7. There is ongoing litigation between the Second Mortgagee, the Debtor and others in the Ontario Superior Court, in Brampton, in Court File No. CV-18-1157-00 (the "**Litigation**"). In the Litigation, the Debtor disputes that the second mortgage is enforceable and, in the alternative, disputes the quantum owing under the second mortgage on the basis that the interest rate applicable under the second mortgage violates the *Criminal Code*.
8. The Receiver has obtained opinions from its independent counsel which, subject to the customary qualifications, confirm the validity and priority of the Applicant's security over



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

the Property and the Second Mortgagee's security over the Property. The opinion regarding the Second Mortgagee's security is also subject to any judicial determinations made in the Litigation.

IV APPRAISAL OF REAL PROPERTY

9. As part of its due diligence, and in order to inform itself as to the value of the Real Property, the Receiver commissioned Colliers to prepare an appraisal of the Real Property, a copy of which is attached as **Confidential Appendix "1"**. In order to avoid potentially suppressing realizations by making the appraisal available in the public record, the Receiver recommends that the appraisal be sealed until a sale of the Real Property is completed.

V MARKETING AND SALE PROCESS

10. The Receiver has carefully considered its realization options in respect of the Real Property after consulting separately with representatives of the First Mortgagee, the Second Mortgagee and the Debtor.
11. During its initial communications with the Second Mortgagee, the possibility of the Second Mortgagee acting as a stalking horse bidder was considered. However, given the timing associated with having the enforceability of the second mortgage and the quantum of indebtedness owing thereunder adjudicated and the First Mortgagee's desire to see the Property monetized within a reasonable timeframe, the Receiver did not consider a stalking horse process with the Second Mortgagee as stalking horse bidder to be practicable.
12. The Receiver thereupon weighed the option of engaging a real estate broker to list the Property on a commission basis and the option of conducting a Receiver's tender process, thereby avoiding paying a potentially significant commission to a listing broker.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

13. The Receiver has significant experience in marketing and selling real property by tender, and believes that it can identify and attract potential buyers through advertisements and through its internal database. The Receiver has already received a number enquiries from parties who have expressed interest in the Property as prospective buyers.

14. The Receiver believes that the best approach is a hybrid of both options whereby it would tender the Property for sale with the assistance of a real estate broker acting as an advisor to the Receiver on a fee-for-time basis rather than on a commission basis.

15. The Receiver proposes to engage Peter De Guerre, of Lennard Commercial Realty (“Lennard”), as its advisor. Mr. De Guerre has significant experience selling land in Southern Ontario. He would assist the Receiver in identifying potential buyers, in advertising and marketing the Property widely, in preparing and obtaining information to populate a data room and in communicating and meeting with interested parties.

16. Although for the reasons hereinabove articulated the Receiver does not consider a stalking horse process with the Second Mortgagee as stalking horse bidder to be practicable, the proposed tender process will not foreclose the Second Mortgagee from submitting a credit bid to purchase the Property if it can manage to have the enforceability of the second mortgage and the quantum of indebtedness owing thereunder adjudicated, or if it can settle those issues with the Debtor, prior to the deadline for submitting offers

Proposed Timeline for Marketing and Sale Process

17. The Receiver proposes to proceed according to the following timeline, which it believes is commercially reasonable given the nature of the Property:

Week 1	<ul style="list-style-type: none"> • Receiver to prepare teaser for distribution to potentially-interested parties.
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ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

	<ul style="list-style-type: none"> Receiver to place newspaper advertisement in <i>The Globe and Mail</i> (National edition) and <i>National Post</i> newspapers, and possibly in other local or industry publications.
Weeks 1 through 7 (inclusive)	<ul style="list-style-type: none"> Receiver to contact all identified potentially interested parties regarding the opportunity and distribute teaser. Receiver to prepare form of offer to purchase, facilitate due-diligence by interested parties who have executed a confidentiality agreement, arrange for access to on-line data room, distribute information package, respond to requests for additional information and for arrange inspections of the Property.
Final day, week 7	<ul style="list-style-type: none"> Deadline for submission of offers.
Week 8	<ul style="list-style-type: none"> Receiver to negotiate with bidders and accept offer.
Final day, week 8	<ul style="list-style-type: none"> Deadline for purchaser's waiver of conditions (if any).
As soon as possible after waiver of conditions (if any)	<ul style="list-style-type: none"> Receiver to move for Approval and Vesting Order, complete transaction and distribute net sale proceeds.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

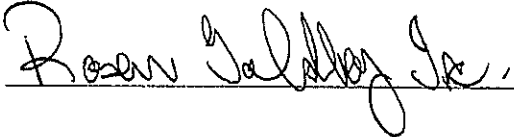
VI RECOMMENDATION

18. On the basis of the foregoing, the Receiver respectfully recommends that this Honourable Court grant approving the Receiver's proposed tender process and seal the Colliers appraisal.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 11th day of July, 2019.

**ROSEN GOLDBERG INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF
189 DUNDAS STREET WEST INC.**



APPENDIX “A”

Court File No. CV-18-601159-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

THE HONOURABLE
JUSTICE McEWEN

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)
)

FRIDAY, THE 3RD
DAY OF MAY, 2019

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

- and -

189 DUNDAS STREET WEST INC.

Respondent

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

ORDER
(appointing Receiver)

THIS APPLICATION made by West End Motors and Trailer Park Limited (“WEM”) 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. (“**Rosen Goldberg**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, over lands and premises registered in the name of the Respondent 189 Dundas Street West Inc. (“**189 Inc.** or the “**Debtor**”) municipally known as 189 Dundas Street West, Mississauga, Ontario and more particularly described in Schedule “A” hereto (the “**Real Property**”) and the remaining assets and undertaking of the Debtor acquired for or used in relation to the Real Property (collectively with



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the Real Property, the “Property”), stayed by way of the Order of Justice Penny made February 25, 2019, was heard this day at 330 University, Toronto, Ontario, pursuant to the Endorsement of Justice Penny made April 8, 2019.

ON READING (i) WEM’s Application Record and Supplementary Application Record, including the affidavit of John Bonin sworn July 6, 2018, and the Exhibits thereto, and the Affidavit of Chad Kopach sworn April 29, 2019, and the Exhibits thereto, (ii) the Responding motion record of the second mortgagees Quincy Investments Limited, 969592 Ontario Limited and 969593 Ontario Limited (collectively, the “Second Mortgagees”) including the affidavit of John Gagliano sworn January 29, 2019, and the Exhibits thereto, (iii) the Endorsements of Justice Penny made February 25, February 26, and April 8, 2019, and (iv) the consent of Rosen Goldberg Inc. to act as the Receiver, and on hearing submissions for counsel for the Applicant, the Respondent and the Second Mortgagees, no one else appearing although properly served,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application, the Application Record and the Supplementary Application Record be and 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 *BLA* and section 101 of the *CJA*, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of 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 to assess and advise on the extent of work required to rectify deficiencies at the Real Property;
- (e) to engage contractors, tradespersons, engineers, quantity surveyors, consultants, appraisers, agents, experts, auditors, accountants, managers, including a property manager, 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;

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- (f) to undertake any steps necessary to ensure the Real Property is well maintained and licensable and is in compliance with the applicable laws and building codes;
- (g) 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;
- (h) 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;
- (i) to settle, extend or compromise any indebtedness owing to the Debtor;
- (j) 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;
- (k) 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;
- (l) to negotiate and settle any and all security interests, trusts, liens, construction liens, trust claims (whether or not perfected or preserved), charges and encumbrances, and claims of secured creditors, statutory or otherwise, against title to the Property;
- (m) with court approval, 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

M other than with respect to the Respondent's debts and liabilities with

Second
Mortgagees
M

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negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(n) 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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; 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;

(o) 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;

(p) 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;

(q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

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- (r) 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;
- (s) 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;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) 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.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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.

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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.

AM This term does not apply to records relating to the Respondent's efforts to refinance. *AM*

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

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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,

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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.

13. **THIS COURT ORDERS** that in the event that an account for the supply of goods and/or services transferred from the Debtor to the Receiver, or otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

Should any utility provider object it may make submissions to the Court.

RECEIVER TO HOLD FUNDS

14. **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

15. **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

16. **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

17. **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

18. **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

19. **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*.

20. **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 Ontario Superior Court of Justice.

21. **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

22. **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*.
23. **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.
24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
25. **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

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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

26. **THIS COURT ORDERS** that the service of documents shall be made by way of an HTML link to the documents as posted by the serving party on either the Case Website (set out below) or if time does not permit, on the serving party's own website, or as a PDF attachment where the party serving the documents is unable to create an HTML link, with HTML Links to the website for cross-referenced documents already posted there (the "Protocol"), and such service 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, 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.com/admin/companyview.php?company_id=50

27. **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

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day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

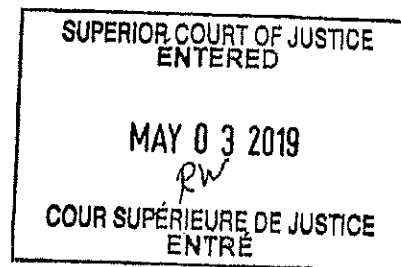
28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. **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.
31. **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.

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32. **THIS COURT ORDERS** the Endorsement of Justice Penny made February 25, 2019, is hereby varied such that neither the Applicant nor the second mortgagees over the Real Property (the "Second Mortgagees") are liable to each other for any costs in respect of this Application to date. 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 full 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, but in any event in priority to the Second Mortgagees and the security of the Second Mortgagees over the Property.

33. **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"

FIRSTLY: PT LT 17 CON 1 NDS TORONTO AS IN TT150954 (SECONDLY); City of MISSISSAUGA, Regional Municipality of Peel, BEING all of PIN 13150-0040 (LT); and

SECONDLY: PT LT 17 CON 1 NDS(TORTWP) DESIGNATED as PT 1, 43R34288; CITY OF MISSISSAUGA, Regional Municipality of Peel, BEING all of PIN 13150-0124 (LT),

Land Titles Division of Peel in the Land Registry Office (No. 43) at Brampton.

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number _____, 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.

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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__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

WEST END MOTORS AND TRAILER PARK LIMITED and **189 DUNDAS STREET WEST INC.**

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding commenced at **TORONTO**

**ORDER
(APPOINTING RECEIVER)**

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Lawyers for the Applicant

CONFIDENTIAL APPENDIX “1”

WEST END MOTORS AND TRAILER PARK LIMITED
Applicant

-and-

189 DUNDAS STREET WEST INC.
Respondent

Court File No. CV-18-601159-CL

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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