

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 17<sup>TH</sup>

)

JUSTICE OSBORNE

)

DAY OF APRIL, 2025

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**APPROVAL AND VESTING ORDER**

(150 Sudbury Street, Toronto, Unit 4, Level A)

**THIS MOTION**, made by msi Spergel inc. in its capacity as the Court-Appointed Receiver (in such capacity, the “**Receiver**”) of certain properties of Toronto Artscape Inc. (the “**Debtor**”) for, among other things, an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Timothy Moxam (the “**Purchaser**”) dated March 13, 2025 and appended to the Third Report of the Receiver dated April 9, 2025 (the “**Third Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the

assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion herein, the First Report of the Receiver dated April 22, 2024 and the Appendices and Confidential Appendices thereto, the Second Report of the Receiver dated December 20, 2024 and the Appendices and Confidential Appendices thereto, and the Third Report and the Appendices and Confidential Appendices thereto, and on hearing the submissions of the lawyers for the Receiver and other interested parties,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected,

registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Steele dated January 11, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of a Transfer/Deed of Land in the form prescribed by the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the Land Titles Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and

remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **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.

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## Schedule A – Form of Receiver's Certificate

Court File No. CV-23-00711609-00CL

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

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APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

### RECEIVER'S CERTIFICATE

#### RECITALS

A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (the "**Court**") dated January 11, 2024, msi Spergel inc. was appointed as the receiver (the "**Receiver**") of certain undertakings, property and assets of Toronto Artscape Inc. (the "**Debtor**") as detailed in the January 11, 2024 Order.

B. Pursuant to an Order of the Court dated April 17, 2025, the Court approved the agreement of purchase and sale made as of March 13, 2025 (the "**Sale Agreement**") between the Receiver and Timoth Moxam (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser

of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**msi Spergel Inc. solely in its capacity as  
the Court-Appointed Receiver of the  
Debtor and not in its personal or  
corporate capacity.**

Per: \_\_\_\_\_

Name: Trevor B. Pringle, CFE, CIRP,  
LIT

Title: Partner

## Schedule B – Purchased Assets

Property Identification Number	Legal Description
76249-0379	UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2249 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3073995; CITY OF TORONTO



## **Schedule C – Claims to be deleted and expunged from title to Real Property**

1. Instrument No. AT6496748 registered January 16, 2024 is an Application for a Court Order appointing MSI Spergel Inc. as receiver.

## **Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property**

### **(unaffected by the Vesting Order)**

1. Instrument No. E4939AZ registered May 14, 1996, is a Restrictive Covenant.
2. Instrument No. E362019 registered October 3, 2000, is a Section 37 Agreement with the City of Toronto.
3. Instrument No. AT1719790 registered February 27, 2008, is Notice of an Agreement with Canadian National Railway Company and Greater Toronto Transit Authority.
4. Instrument No. AT1784893 registered May 22, 2008, is a Transfer Easement in favour of Rogers Cable Communications Inc.
5. Instrument No. AT1929991 registered October 22, 2008, is a Transfer Easement in Greater Toronto Transit Authority and Canadian National Railway Company.
6. Instrument No. AT2198441 registered October 7, 2009, is an Application General.
7. Instrument No. AT2483854 registered August 23, 2010, is Notice of an Agreement between Westside Gallery Lofts Inc., Distance Road Co. Inc., and the City of Toronto.
8. Instrument No. AT2483856 registered August 23, 2010, is a Postponement from Rogers Communications Inc. to the City of Toronto.
9. Instrument No. AT2497740 registered September 3, 2010, is a Notice of a Shared Facilities Agreement between Toronto Artscape Inc., and Westside Gallery Lofts Inc.
10. Instrument No. AT2497741 registered September 3, 2010, is Notice of a Three Way Shared Facilities Agreement between Toronto Artscape Inc., Westside Gallery Lofts Inc., and Westside Gallery Lofts Inc.
11. Instrument No. AT2498075 registered September 7, 2010, is a Transfer Easement in favour of Abell Investments Limited and St. Clare's Multifamily Housing Society.
12. Instrument No. AT2498248 registered September 7, 2010, is a Transfer Easement in favour of Abell Investments Limited and St. Clare's Multifamily Housing Society.
13. Instrument No. AT2500640 registered September 9, 2010, is a Postponement from Rogers Communications Inc. to Abell Investments Limited and St. Clare's Multifamily Housing Society.
14. Instrument No. AT2675027 registered April 27, 2011, is Notice of a Site Plan Agreement between the City of Toronto, Distance Road Co. Inc. and Westside Gallery Lofts Inc.
15. Instrument No. AT3070814 registered July 11, 2012, is Notice of a Crane/Piling and Tie Back Agreement between Edge On Triangle Park Inc. and Westside Gallery Lofts Inc.
16. Instrument No. AT3070815 registered July 11, 2012, is Notice of a Crane/Piling and Tie Back Agreement between Epic On Triangle Park Inc. and Westside Gallery Lofts Inc.
17. Instrument No. TCP2249 registered July 16, 2012, is a Standard Condominium Plan.
18. Instrument No. AT3073995 registered July 16, 2012, is the Condominium Declaration.
19. Instrument No. AT3094240 registered August 3, 2012, is a Restrictive Covenant.
20. Instrument No. AT3100646 registered August 14, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 1.
21. Instrument No. AT3100647 registered August 14, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 2.
22. Instrument No. AT3100648 registered August 14, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 3.
23. Instrument No. AT3100649 registered August 14, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 4.

24. Instrument No. AT3100650 registered August 14, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 5.
25. Instrument No. AT3100651 registered August 14, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 6.
26. Instrument No. AT3100722 registered August 14, 2012, is Notice of a Shared Facilities Agreement.
27. Instrument No. AT3103107 registered August 16, 2012, is Notice of a Shared Facilities Agreement.
28. Instrument No. AT3104262 registered August 17, 2012, is a Notice of Security Interest
29. Instrument No. AT3106455 registered August 21, 2012, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 7.
30. Instrument No. AT5011046 registered November 20, 2018, is Notice of a Change of Address on Instrument AT3104262.
31. Instrument No. AT5058459 registered January 21, 2019, is Toronto Standard Condominium Corporation No. 2249 By-Law No. 8.

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Court File No. CV-23-00711609-00CL

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PROCEEDING COMMENCED AT TORONTO

**APPROVAL AND VESTING ORDER**

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