

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 27th DAY
JUSTICE A.J. GOODMAN) OF APRIL, 2023

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel inc., in its capacity as the court-appointed receiver (the "Receiver") of the undertaking, property and assets of 2580363 Ontario Inc. and 2580361 Ontario Inc. (collectively, the "Debtors") for an order, among other relief, approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale dated January 27, 2023 and accepted February 6, 2023, as amended (the "Sale Agreement") between the Receiver and Muse Properties Ltd., as general partner for and on behalf of Muse Properties Limited Partnership (the "Purchaser") and appended to the Report of the Receiver dated April 12, 2023 (the "First Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets, including the real property owned by 2580361 Ontario Inc., described in the Sale

Agreement (the "Purchased Assets"), was heard this day by videoconference via Zoom in Hamilton, Ontario due to the COVID-19 pandemic.

ON READING the First Report, and on hearing the submissions of counsel for the Receiver, and those parties listed on the Counsel Slip or Participant Information Form, no one else appearing although duly served with the Receiver's Motion Record and First Report as appears from the affidavit of service of Michelle Pham sworn April 17, 2023, filed:

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

2. 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.

3. THIS COURT ORDERS AND DECLARES that upon the completion of the Sale Agreement and 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 Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement including the real property described in 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 Orders of the Honourable Justice MacNeil each dated June 2, 2022 and the Honourable Justice Parayeski dated October 4, 2022; (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.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton (No. 62) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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.

5. 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.

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

7. 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 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

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 Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, 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.

8. 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.

9. THIS COURT ORDERS that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.

A handwritten signature in blue ink, consisting of stylized initials followed by a horizontal line extending to the right.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-22-0078521-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to the Orders of the Honourable Justice MacNeil each dated June 2, 2022 and the Honourable Justice Parayeski dated October 4, 2022, of the Ontario Superior Court of Justice (the "Court"), msi Spergel inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of 2580363 Ontario Inc. and 2580361 Ontario Inc. (the “Debtors”).

B. Pursuant to an Order of the Court dated April 27, 2023, the Court approved the Agreement of Purchase and Sale dated January 27, 2023 and accepted February 6, 2023, as amended (the "Sale Agreement") between the Receiver and Muse Properties Ltd., as general partner for and on behalf of Muse Properties Limited Partnership (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 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 on ●, 2023.

**msi Spergel Inc., in its capacity as Receiver of
the undertaking, property and assets of
2580363 Ontario Inc. and 2580361 Ontario
Inc., and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Legal Description of Real Property

PIN 17170-0018 (LT)

PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON

Municipally known as 21 Augusta Street, Hamilton, Ontario

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

<u>Reg. No.</u>	<u>Date Registered</u>	<u>Parties</u>	<u>Brief Description</u>
WE1241737	2017/10/05	1704342 Ontario Limited and 2580361 Ontario Inc.	TRANSFER (\$1,275,000)
WE1375722	2019/08/22	2580361 Ontario Inc. and The Toronto-Dominion Bank	CHARGE (\$1,205,000)
WE1375723	2019/08/22	2580361 Ontario Inc. and The Toronto-Dominion Bank	NO ASSGN RENT GEN
WE1528225	2021/07/12	2580361 Ontario Inc. and Olympia Trust Company	CHARGE (\$246,000)
WE1544032	2021/09/07	2580361 Ontario Inc. and Comfort Capital Inc.	CHARGE (\$225,000)
WE1544033	2021/09/07	Olympia Trust Company and Comfort Capital Inc.	POSTPONEMENT
WE1557214	2021/10/29	2580361 Ontario Inc. and Magis, Alex	CHARGE (\$135,000)
WE1631716	2022/09/02	Ontario Superior Court of Justice and MSI Spergel Inc.	APL COURT ORDER
WE1631717	2022/09/02	Ontario Superior Court of Justice and MSI Spergel Inc.	APL COURT ORDER

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

(unaffected by the Vesting Order)

General Permitted Encumbrances

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
2. Development agreements, servicing agreements, utility agreements and other similar agreements with Governmental Authorities or public utilities which in the aggregate do not materially impair the value of the Real Property.
3. Encroachments by the Real Property over neighbouring lands and/or permitted under agreements with neighbouring landowners which in the aggregate do not materially impair the value of the Real Property.
4. Any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant of the Real Property from the Crown.
5. The limitations, exceptions and qualifications contained in the *Land Titles Act* (Ontario).
6. Any rights of expropriation, access or use or any other rights conferred or reserved by or in any statute of Canada or the Province of Ontario.
7. Any unregistered interest in the Real Property of which the Purchaser has actual notice.
8. Any unregistered easements regarding the provision of utilities to the Real Property.
9. All registrations which are registered against title to the Real Property or any portion thereof by, for or through the actions or instructions of the Purchaser.
10. Any rights reserved to or vested in any Governmental Authorities by any statutory provision or authority.

Specific Permitted Encumbrances

<u>Reg. No.</u>	<u>Date Registered</u>	<u>Parties</u>	<u>Brief Description</u>
CD474814	1988/09/13	City of Hamilton	Agreement (Sketch Attached)
VM273002	2007/06/11	1704342 Ontario Limited, 1704343 Ontario Limited and City of Hamilton	Agreement

THE TORONTO-DOMINION BANK
Applicant

-and- **2580363 ONTARIO INC. and 2580361 ONTARIO INC.**
Respondents

Court File No. CV-22-0078521-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

APPROVAL AND VESTING ORDER

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