NOTICE OF SALE UNDER MORTGAGE

TAKE NOTICE that default has been made in payment of moneys due in a certain mortgage made between DOMENIC CARCHIDI and CARMELINA CARCHIDI, as Mortgagors, and NATIONAL TRUST COMPANY as Mortgagee, on the following lands and premises as set out hereto:

Part of Lot 9, Plan 4842
City of North York,
Municipality of Metropolitan Toronto
Registry Office for the Registry Division of
Metropolitan Toronto.

more particularly described in the Parcel Register as: PT LT 9 PL 4842 NORTH YORK AS IN TB980324; TORONTO (N YORK) , CITY OF TORONTO

PIN 10273 - 0166 (LT)

Which mortgage was registered on the 30th day of January, 1996, in the Land Registry Office for the Registry Division of Toronto (No. 64 more particularly described in the Parcel Register as Land Registry Office No. 66), as Instrument No. TB980325.

AND NATIONAL TRUST COMPANY hereby gives you notice that the amount now due on the mortgage for principal money, interest and costs, respectively, are as follows:

Principal balance as at July 1, 2008	$119,572.16
Plus accrued interest from July 1, 2008 to January 12, 2009	$ 3,189.78
Plus interest from January 12, 2009 to January 20, 2009(inclusive)	$ 149.94
Tax account debit	$ 342.51
Insurance placed by National Trust Company	$ 281.00
Property Management Fee	$ 36.75
Plus legal fees and disbursements incl. GST to date herein	$ 3,829.23
	$127,401.37

together with interest thereon at the rate of $16.66 per day from this date and any further costs incurred by these proceedings.

AND unless the said sums are paid on or before the 27th day of February, 2009, NATIONAL TRUST COMPANY shall sell the property covered by the said Mortgage under provisions contained in it.

THIS NOTICE is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED at Mississauga, this 20th day of January, 2009.

NATIONAL TRUST COMPANY
by its solicitors
GOODMAN & GRIFFIN

JACK C. GOODMAN

Reply to: Goodman & Griffin
Barristers & Solicitors
44 Village Centre Place
MISSISSAUGA, Ontario
L4Z 1V9
File No.: N08CA388/sa

This is Exhibit E referred to in the affidavit of DOMENIC CARCHIDI sworn before me, this 6th day of February 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

GREG GRYGUC
BARRISTER, SOLICITOR, NOTARY PUBLIC
851 WILSON AVENUE
TORONTO, ONTARIO M3K 1E6

For further inquiries please contact JENNIFER (905) 276-5050 (Ext. 304)

This is Exhibit D referred to in the affidavit of Domenic Carchidi sworn before me, this 24th day of March 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

DISCHARGE STATEMENT
RE: CARCHIDI SECOND MTGE. TO TOFFOLI
ON 475 RUSTIC AVENUE, TORONTO
AS AT February 10, 2009

PRINCIPAL BALANCE OUTSTANDING As at December 30, 2007: (no further payments made after Dec/30/07)	**$ 90,000.00**
Interest from December 31, 2007 to February 10, 2009: 407 days at $27.12) =	**$ 11,037.84**
Legal fees and disbursements:	**$ 1,575.00**
TOTAL OUTSTANDING TO February 10, 2009:	**$102,612.84**

PER DIEM: $27.12

DATED THIS 10th day of FEBRUARY, 2009

E. & O. E.

Toronto Real Estate Board

OREA Ontario Real Estate Association

Agreement of Purchase and Sale

This is Exhibit G referred to in the affidavit of A. Carmelina Carchidi sworn before me this 24th day of March 2009, A COMMISSIONER FOR TAKING AFFIDAVITS

This Agreement of Purchase and Sale dated March 19, 2009

BUYER, Bruno N. Perino (Full legal names of all Buyers), agrees to purchase from

SELLER, Domenic & Carmelina Carchidi (Full legal names of all Sellers), the following

REAL PROPERTY:

Address 475 Rustic Road Toronto, Ontario M6L 1X3 fronting on the South side of Rustic Road Toronto

in the City of Toronto

and having a frontage of 36 Feet more or less by a depth of 107 Feet more or less and legally described as Part Lot 9, Plan 4842 AS PER ATTACHED SURVEY SCHEDULE "C" (the "property").

(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Three Hundred Nine Thousand Nine Hundred Dollars (CDN$) 309,900.00

DEPOSIT: Buyer submits Upon Acceptance (Herewith/Upon acceptance/as otherwise described in this Agreement)

Ten Thousand Dollars (CDN$) 10,000.00 "Deposit Holder"

by negotiable cheque payable to Sutton Group - Tower Realty Ltd. to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, B **attached hereto form(s) part of this Agreement.**

1. **IRREVOCABILITY**: This Offer shall be irrevocable by Buyer (Seller/Buyer) until 9:00 p.m. on the 19th day of March, 2009, after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.
2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 1st day of April, 2009. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.
3. **NOTICES:** Seller hereby appoints the Listing Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. **Only if the Co-operating Brokerage represents the interests of the Buyer in this transaction,** the Buyer hereby appoints the Co-operating Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

Fax No. 416-783-6082 (For delivery of notices to Seller) Fax No. 416-783-6082 (For delivery of notices to Buyer)

INITIALS OF BUYER(S): **INITIALS OF SELLER(S):**

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January 20, 2006

DELIVERED BY FIRST CLASS MAIL
PERSONAL & CONFIDENTIAL

MR. DOMENIC CARCHIDI
475 Rustic Road
North York, Ontario

-AND TO-

MRS. CARMELINA CARCHIDI
475 Rustic Road
North York, Ontario

This is Exhibit A referred to in the affidavit of DOMENIC CARCHIDI sworn before me, this 6th day of February 20 09

A COMMISSIONER FOR TAKING AFFIDAVITS

GREG GRYGUC
BARRISTER, SOLICITOR, NOTARY PUBLIC
851 WILSON AVENUE
TORONTO, ONTARIO M3K 1E6

Dear Sir/Madam:

Re: **OUR CLIENT:** **DOREEN TENNINA**
PROPERTY: **475 RUSTIC ROAD, NORTH YORK, ONTARIO**
LEGAL DESCRIPTION: **PT. LOT 9, PLAN 4842, CITY OF TORONTO**

Please be advised that we have been retained by Ms.Tennina in regards to the above-noted matter.

Enclosed is a copy of the Charge/Mortgage of Land which is now **DUE AND OWING.**

In the event we do not hear from you within 15 days of this letter, we will have no other alternative but to commence legal action against you and proceed with Power of Sale.

Govern yourself accordingly.

Yours truly,
DALEY & ASSOCIATES
Per:

Sandra Montanari
Law Clerk

4000 Steeles Ave. West, Suite 200, Woodbridge, Ontario L4L 4V9
(905) 850-2002 Facsimile (905) 850-2007

Properties

PIN	10273 - 0166 LT	*Interest/Estate*	Fee Simple
Description	PT LT 9 PL 4842 NORTH YORK AS IN TB980324; S/T EXECUTION 91-014873, IF ENFORCEABLE; TORONTO (N YORK) , CITY OF TORONTO		
Address	475 RUSTIC ROAD CITY OF TORONTO		

Chargor(s)

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

Name	CARCHIDI, CARMELINA
Address for Service	475 RUSTIC ROAD NORTH YORK, ONTARIO

I am at least 18 years of age.

CARCHIDI, DOMENIC and I are spouses of one another and are both parties to this document

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

Name	CARCHIDI, DOMENIC
Address for Service	475 RUSTIC ROAD NORTH YORK, ONTARIO

I am at least 18 years of age.

CARCHIDI, CARMELINA and I are spouses of one another and are both parties to this document

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

Chargee(s) *Capacity* *Share*

Name	TENNINA, DOREEN
Address for Service	c/o 98 Healey Road Bolton, Ontario L7E 5A7

Provisions

Principal	$ 75,000.00	*Currency*	CDN
Calculation Period			
Balance Due Date	ON DEMAND		
Interest Rate			
Payments			
Interest Adjustment Date			
Payment Date			
First Payment Date			
Last Payment Date			
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Signed By

Victoria Elizabeth DeVita	14740 Duffy's Lane, RR #5 Bolton L7E 5S1	acting for Chargor(s)	Signed	2006 01 13

Tel 416-995-7262
Fax 9059513940

Submitted By

CVD CONTRACTING	14740 Duffy's Lane, RR #5 Bolton L7E 5S1	2006 01 13

Tel 416-995-7262
Fax 9059513940

Fees/Taxes/Payment

Statutory Registration Fee	$60.00
Total Paid	$60.00

Province of Ontario

Charge/Mortgage of Land

Form 2 -- Land Registration Reform Act

B

FOR OFFICE USE ONLY

TB980325

CERTIFICATE OF REGISTRATION
YORK REGISTRY (NO. 64)
DIVISION DE L'ENREGISTREMENT
DE TORONTO

'96 01 30 13 : 43

LAND REGISTRAR
REGISTRATEUR

New Property Identifiers

Additional: See Schedule ☐

Executions

Additional: See Schedule ☐

(1) Registry ☒ Land Titles ☐ (2) Page 1 of 2 pages

(3) Property Identifier(s) Block 10273 - Property 0166 (R) Additional: See Schedule ☐

(4) Principal Amount
One hundred seventy nine thousand three hundred seventy five Dollars $ 179,375.00**

(5) Description

Part of Lot 9, Plan 4842,

City of North York,
Municipality of Metropolitan Toronto
Registry Office for the Registry Division of
Metropolitan Toronto.

This is Exhibit B referred to in the affidavit of DOMENIC CARCHIDI sworn before me, this 6th day of February 2009.

A COMMISSIONER FOR TAKING AFFIDAVIT

GREG GRYGUC
BARRISTER, SOLICITOR, NOTARY PUBLIC
851 WILSON AVENUE
TORONTO, ONTARIO M3K 1E6

(6) This Document Contains (a) Redescription New Easement Plan/Sketch ☐ (b) Schedule for Description ☒ Additional Parties ☐ Other ☐

(7) Interest/Estate Charged Fee Simple: Fee Simple

(8) Standard Charge Terms —The parties agree to be bound by the provisions in Standard Charge Terms filed as number 8616 and the Chargor(s) hereby acknowledge(s) receipt of a copy of these terms.

(9) Payment Provisions

(a) Principal Amount $ 179,375.00***			(b) Interest Rate *7.75* % per annum			(c) Calculation Period semi-annually, not in advance.		
(d) Interest Adjustment Date	Y 1996	M 02	D 01	(e) Payment Date and Period 1st day of each month		(f) First Payment Date	Y 1996	M 03	D 01
(g) Last Payment Date	1999	02	01	(h) Amount of Each Payment One thousand three hundred forty one/00*** Dollars $1,341.00***					
(i) Balance Due Date	1999	02	01	(j) Insurance FULL REPLACEMENT VALUE Dollars $					

(10) Additional Provisions

Continued on Schedule ☐

(11) Chargor(s) The chargor hereby charges the land to the chargee and certifies that the chargor is at least eighteen years old and that
We are spouses of one another.

The chargor(s) acknowledge(s) receipt of a true copy of this charge.

Name(s)	Signature(s)	Date of Signature Y	M	D
CARCHIDI, Domenic		1996	01	29
CARCHIDI, Carmelina		1996	01	29

(12) Spouse(s) of Chargor(s) I hereby consent to this transaction.

Name(s)	Signature(s)	Date of Signature Y	M	D

(13) Chargor(s) Address for Service 475 Rustic Road, North York, Ontario M6L 1X3

(14) Chargee(s)
NATIONAL TRUST COMPANY

(15) Chargee(s) Address for Service 10 Wright Blvd. P.O.Box 128, Stratford, Ontario N5A 6S9

(16) Assessment Roll Number of Property	City	Mun.	Map	Sub.	Par.
	19	08	022	490	02100

(17) Municipal Address of Property
475 Rustic Road,
North York, Ontario
M6L 1X3

(18) Document Prepared by:
JOSEPH BAGLIERI
1600 Steeles Avenue West
Suite 312
Concord, Ontario, L4K 4M2

FOR OFFICE USE ONLY

Fees	
Registration Fee	60
Total	60

An ExperText Systems Ltd. Form

7M82

Additional Property Identifier(s) and/or Other Information

BOX (5) DESCRIPTION

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of North York, in the Municipality of Metropolitan Toronto and being composed of part of Lot 9 as shown on Registered Plan 4842 York, which said parcel may be more particularly described as follows:

COMMENCING at a point in the northerly limit of Lot 9 distant 70 feet measured easterly therealong from the north west angle of said lot 9;

THENCE EASTERLY along the northerly limit of Lot 9 aforesaid being along the southerly limit of Rustic Road, a distance of 36 feet 2 inches to its intersection with the production northerly of the centre line of the party wall between the brick dwellings standing on the herein described parcel and that to the east thereof;

THENCE SOUTHERLY along said production, to and along said centre line, in all 56 feet 2½ inches to the southerly face of the southerly wall of the brick dwelling standing on the herein described parcel;

THENCE EASTERLY along the southerly face of the southerly wall of the brick dwelling standing on the parcel to the east of that herein described 10 inches to its intersection with the easterly limit of lot 9 aforesaid;

THENCE SOUTHERLY along the easterly limit of lot 9 aforesaid 61 feet 4-3/4 inches more or less to a point therein distant 28 feet measured northerly along the said easterly limit of lot 9 from the south east angle thereof;

THENCE WESTERLY parallel to the southerly limit of lot 9 aforesaid 16 feet;

THENCE NORTH WESTERLY in a straight line 107 feet 6½ inches more or less to the place of beginning.

As previously described in Instrument No. North York 662812.

OFFICE USE ONLY

RO # 80 **Charge/Mortgage** **Receipted as AT445821** on 2004 03 31 at 14:44

e applicant(s) hereby applies to the Land Registrar. yyyy mm dd

Properties

IN 10273 - 0166 LT Estate/Qualifier Fee Simple Lt Conversion Qualified

Description PT LT 9 PL 4842 NORTH YORK AS IN TB980324; S/T EXECUTION 91-014873, IF ENFORCEABLE: TORONTO (N YORK) , CITY OF TORONTO

ddress 475 RUSTIC AVENUE
NORTH YORK

Chargor(s)

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

Name CARCHIDI, CARMELINA

ddress for Service 475 Rustic Road
Toronto, Ontario
M6L 1X3.

am at least 18 years of age.

OMENIC CARCHIDI and I are spouses of one another and are both parties to this document

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

Name CARCHIDI, DOMENIC

Address for Service 475 Rustic Road
Toronto, Ontario
M6L 1X3.

I am at least 18 years of age.

ARMELINA CARCHIDI and I are spouses of one another and are both parties to this document

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

Chargee(s)	Capacity	Share
ame	TOFFOLI, LILLIAN	
ddress for Service	55 Powell Road Toronto, Ontario M3K 1M6.	

Provisions

ncipal	$ 90,000.00	*Currency*	CDN
ulation Period	interest-only		
ance Due Date	2005/03/31		
erest Rate	10.0%		
ments	$ 750.00		
Interest Adjustment Date	2004 03 31		
ayment Date	last days of each and every month		
irst Payment Date	2004 04 30		
.ast Payment Date	2005 03 31		
Standard Charge Terms	9320		
nsurance Amount	full insurable value		
Guarantor	n/a		

LRO # 80 **Charge/Mortgage** **Receipted as AT445821** on 2004 03 31 at 14:44

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

Additional Provisions

PROVIDED that the mortgagors, when not in default, shall have the privilege of pre-paying the whole or any part of the principal sum at any time or times upon payment of three months' interest bonus.

The Mortgagors will provide the mortgagee with 12 post-dated chques for the length of the within mortgage.

PROVIDED that if for any reason the mortgagors' cheques are returned by the Mortgagors' Bank N.S.F. the mortgagors will provide the mortgagee with the sum of ONE HUNDRED ($100.00) DOLLARS for every N.S.F. cheque.

PROVIDED that this Mortgage is non-transferrable and non-assignable at any time or times.

Signed By

Joanne Brocca	845 Wilson Ave. Ste. 201 Toronto M3K 1E6	acting for Chargor(s)	Signed	2004 03 31

Tel 416-636-9770
Fax 4166361655

Submitted By

DAVID BRANNAN LAW OFFICE	845 Wilson Ave. Ste. 201 Toronto M3K 1E6	2004 03 31

Tel 416-636-9770
Fax 4166361655

Fees/Taxes/Payment

Statutory Registration Fee	$60.00
Total Paid	$60.00

TO: DOMENIC CARCHIDI
475 Rustic Road
North York, Ontario
M6L 1X3

AND TO: THE SPOUSE OF DOMENIC CARCHIDI
475 Rustic Road
North York, Ontario
M6L 1X3

AND TO: CARMELINA CARCHIDI
475 Rustic Road
North York, Ontario
M6L 1X3

AND TO: THE SPOUSE OF CARMELINA CARCHIDI
475 Rustic Road
North York, Ontario
M6L 1X3

AND TO: DOMENIC CARCHIDI
475 Rustic Road
Toronto, Ontario
M6L 1X3

AND TO: THE SPOUSE OF DOMENIC CARCHIDI
475 Rustic Road
Toronto, Ontario
M6L 1X3

AND TO: CARMELINA CARCHIDI
475 Rustic Road
Toronto, Ontario
M6L 1X3

AND TO: THE SPOUSE OF CARMELINA CARCHIDI
475 Rustic Road
Toronto, Ontario
M6L 1X3

AND TO: LILLIAN TOFFOLI
55 Powell Road
Toronto, Ontario
M3K 1M6

(Re: Instrument No. AT445821)

AND TO: DAVID BRANNAN LAW OFFICE
845 Wilson Avenue
Suite 201
Toronto, Ontario
M3K 1E6

Attention: Joanne Brocca

(Re: Instrument No. AT445821)

AND TO: DOREEN TENNINA
c/o 98 Healey Road
Bolton, Ontario
L7E 5A7

(Re: Instrument No. AT1035243)

AND TO: CVD Contracting
14740 Duffy's Lane
RR #5
Bolton, Ontario
L7E 5S1

Attention: Victoria Elizabeth DeVita

(Re: Instrument No. AT1035243)

AND TO: THE TORONTO-DOMINION BANK
c/o TD CANADA TRUST COLLECTIONS
3500 Steeles Avenue East
Tower 1, Level 4
Markham, Ontario
L3R 0X1

(Re: Execution Nos. 04-0001962 and 07-0002133)

AND TO: WATEROUS, HOLDEN, AMEY, HITCHON LLP
20 Wellington Street
P. O. Box 1510
Brantford, Ontario
N3T 5V6

Attention: Lorne E. Parkhill

(Re: Execution Nos. 04-0001962 and 07-0002133)

AND TO: RIANA CONTRACTING LIMITED
Unit 5
286 Atwell Drive
Etobicoke, Ontario
M9W 5P2

(Re: Execution No. 04-0006394)

AND TO: MORRISON AND PAYNE
Barristers & Solicitors
45 Sheppard Avenue East
Suite 221
Toronto, Ontario
M2N 5W9

Attention: Richard Payne

(Re: Execution No. 04-00006394)

AND TO: 2025107 ONTARIO INC.
1686 Coldwater Mews
Mississauga, Ontario
L5M 4X2

(Re: Execution No. 06-0006140)

AND TO: JOHN R. E. BACON
Barrister & Solicitor
1523 Hurontario Street
Mississauga, Ontario
L5G 3H7

(Re: Execution No. 06-0006140)

AND TO: MADELEINE GRANDE
109 Heatherside Drive
Toronto, Ontario
M1W 1T6

(Re: Execution No. 07-0006953)

AND TO: DOMINIC CAMPIONE
CAMPIONE & VATURI
Barristers & Solicitors
1110 Finch Avenue West
Suite 800
Toronto, Ontario
M3J 2T2

(Re: Execution No. 07-0006953)

AND TO: JEANNIE NESCI
18 Sorrento Court
Downsview, Ontario
M3L 2G2

(Re: Execution No. 08-0004178)

AND TO: REID, MICHAEL J.
BROWN, PECK & LUBELSKY
5287 Yonge Street
Toronto, Ontario
M2N 5R3

(Re: Execution No. 08-0004178)

AND TO: CARLO IADELUCA
42 Beaufort Hills Road
Toronto, Ontario
M4E 1M7

(Re: Execution No. 08-0007138)

AND TO: ZEPPIERI & ASSOCIATES
Barristers & Solicitors
851 Wilson Avenue
Toronto, Ontario
M3K 1E6
Attention: Enzo Zeppieri **COURTESY COPY**

AND TO: NATIONAL TRUST COMPANY
Attention: Maria Belanger
(Re: Mortgage Reference No. 3215696) **COURTESY COPY**

Court File No. CV-09-371488

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. JUSTICE MATLOW	) MONDAY,THE 30th DAY OF) MARCH, 2009)

B E T W E E N:

DOMENIC CARCHIDI and CARMELINA CARCHIDI

Plaintiffs

-and-

DOREEN TENNINA

Defendants

O R D E R

THIS MOTION, made by the Plaintiff for an interlocutory and permanent injunction pursuant to Section 101, Courts of Justice Act, to remove the mortgage/charge registered as Instrument No. AT1035243, from the property municipally as 475 Rustic Road, Toronto, Ontario, including deleting the said charge from the Register.

ON READING, the motion record, factum and book of authorities and on hearing submission of counsel for the plaintiff and no one appearing on behalf of the defendant and execution creditors although properly served as appears from the affidavit of service of Rose Serino sworn March 25, 2009:

1. **THIS COURT ORDERS** that the mortgage in favour of Doreen Tennina registered as Instrument No. AT1035243, be and it is hereby discharged, including the deleting the said charge from the Register from the property municipally known as 475 Rustic Road, Toronto, Ontario, described as follows:

PT LT 9, PL 4842 North York as in TB980324; S/T Execution – 91-014873, If enforceable; Toronto (N.York), City of Toronto, being PIN No. 10273-0166 Ltd;

2. **THIS COURT FURTHER ORDERS** that the net proceeds of the sale of the property municipally known as 475 Rustic Road, Toronto, Ontario be paid to Zeppieri & Associates in trust and that any amount which are in excess of the amount required to discharge the first mortgage in favour of National Trust Company registered as Instrument No. TB980325 and the second mortgage in favour of Lillian Toffoli registered as Instrument No. AT445821 be paid to the Accountant of the Ontario Superior Court of Justice until further order of this Court.

3. **THIS COURT FURTHER ORDERS** that the following writs of execution registered as against the Plaintiff, Domenic Carchidi be postponed until after the sale of the Property:

(a) Execution No. 04-0001962

Issue Date: 2003-09-04

Amount: $25,128.17

(b) Execution No. 04-0006394

Issue Date: 2004-10-13

Amount: $19,540.06

(c) Execution No. 06-0006140

Issue Date: 2006-07-18

Amount: $23,846.58

(d) Execution No. 07-0002133

Issue Date: 2007-03-09

Amount: $9,698.25

(e) Execution No. 07-0006953

Issue Date: 2007-07-27

Amount: $5,788.14

(f) Execution No. 08-0004178

Issue Date: 2008-04-21

Amount $43,825.84

(g) Execution No. 08-0007138

Issue Date: 2007-11-16

Amount $1,600.00

4. **THIS COURT FURTHER ORDERS** an abridgment for the time for service of the herein motion record including supporting affidavits.

_____

Court File No. CV-09-371488

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DOMENIC CARCHIDI and CARMELINA CARCHIDI

Plaintiffs

-and-

DOREEN TENNINA

Defendants

AFFIDAVIT OF DOMENIC CARCHIDI
SWORN MARCH 24, 2009

I, **DOMENIC CARCHIDI**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY AS FOLLOWS:

1. I am the spouse of the co-Plaintiff, Carmelina Carchidi ("Domenic") and ("Carmelina") and we reside together at the home that we own by joint tenancy, described as:

   PT LT 9, PL 4842 North York as in TB980324; S/T Execution – 91-014873, If enforceable; Toronto (N.York), City of Toronto, being PIN No. 10273-0166 LT;

   Municipally known as 475 Rustic Road, City of Toronto ("Property:").

and as such I have knowledge of the matters to which I depose.

2. By correspondence dated January 20, 2006, the Defendant's counsel advised me and Carmelina that the Defendant had a mortgage on our Property with the following relevant terms:

(a) The Principal Amount of $75,000.00;

(b) Balance due date on demand;

(c) Chargors are the Plaintiffs, the chargee is Doreen Tennina;

(d) Dated January 13, 2006;

(e) Instrument No. AT1035243 ("Mortgage").

Attached hereto as **Exhibit "A"** is a copy of the said correspondence.

3. I had no knowledge of the Mortgage prior to said correspondence, and I have been advised by Carmelina and verily believe that she also had no knowledge prior to said correspondence.

4. I and I have been advised by Carmelina and verily believe with respect to said Mortgage, we:

(a) Never entered into a Mortgage agreement with the Defendant;

(b) Never signed any documentation with respect to the Mortgage;

(c) Never benefited it from the Mortgage;

(d) Never received $75,000.00, from the Defendant.

5. I confirm that myself and Carmelina entered into the following two proper mortgages on our Property:

(a) First mortgage:

Mortgagee: National Trust Company

Amount: $179,375.00

Instrument No.: TB980325.

(b) Second Mortgage:

Mortgagee: Lillian Toffoli

Amount: $90,000.00

Instrument No.: AT445821

("First and Second Mortgages"). Attached hereto as **Exhibit "B"** is a copy of the said First and Second Mortgages.

6. I confirm that myself and Carmelina are in default of the First and Second mortgages. As a result, the first mortgagee has started a Power of Sale proceedings by Notice of Sale Under Mortgage dated January 20, 2009. Attached hereto as **Exhibit "C"** is a copy of said Notice of Sale Under Mortgage.

7. I confirm pursuant to Notice of Sale Under Mortgage, as of January 20, 2009, the amount of $127,401.37, was owing together with interest thereof at the rate of $16.66 per day. Furthermore, with respect to the second mortgage, the outstanding amount is $102,612.84, as of February 10, 2009. Attached hereto as **Exhibit "D"** is a copy of the discharge statement from the second mortgagee confirming said amount.

8. In order to satisfy the First and Second Mortgages, I have been advised and verily believe that Carmelina first entered into an agreement with Home Trust for a mortgage in the amount of $250,000.00, with a Commitment for an Acceptance date of November 24, 2008, and final date of December 15, 2008. Subsequently, Carmelina entered into a revised mortgage commitment from Home Trust, dated January 19, 2009, for the new loan amount of $236,250.00. Attached hereto as **Exhibit "E"** are copies of both commitments from Home Trust confirming the above.

9. I confirm the following are the outstanding Writs of Execution registered as against my name and were all registered subsequent to the First and Second Mortgages:

(a) Execution No. 04-0001962

Issue Date: 2003-09-04

Amount: $25,128.17

(b) Execution No. 04-0006394

Issue Date: 2004-10-13

Amount: $19,540.06

(c) Execution No. 06-0006140

Issue Date: 2006-07-18

Amount: $23,846.58

(d) Execution No. 07-0002133

Issue Date: 2007-03-09

Amount: $9,698.25

(e) Execution No. 07-0006953

Issue Date: 2007-07-27

Amount: $5,788.14

(f) Execution No. 08-0004178

Issue Date: 2008-04-21

Amount $43,825.84

(g) Execution No. 08-0007138

Issue Date: 2007-11-06

Amount $1,600.00

10. As a result of Carmelina being unable to proceed with the Home Trust mortgage due to the Defendant's mortgage registered on title, we obtained the Order of Madam Justice Kelly dated February 26, 2009, that ordered the following:

> **THE COURT ORDERS** that the mortgage in favour of Doreen Tennina registered as Instrument No. AT1035243, shall be postponed to allow the Home Trust Mortgage, Loan No.369312, to be registered on the property municipally known as 475 Rustic Road, Toronto, Ontario, described as follows:
>
> PT LT 9, PL 4842 North York as in TB980324; S/T Execution – 91-014873, if enforceable; Toronto (N.York),
>
> City of Toronto, being PIN No. 10273-0166 LT.
>
> **THIS COURT FURTHER ORDERS** an interlocutory and permanent injunction to postpone the following writs of execution registered as against the Plaintiff, Domenic Carchidi to allow the Home Trust Mortgage, Loan No. 369312, to be registered on the Property:
>
> (a) Execution No. 04-0001962
>
> Issue Date: 2003-09-04
>
> Amount: $25,128.17

(b) Execution No. 04-0006394

Issue Date: 2004-10-13

Amount: $19,540.06

(c) Execution No. 06-0006140

Issue Date: 2006-07-18

Amount: $23,846.58

(d) Execution No. 07-0002133

Issue Date: 2007-03-09

Amount: $9,698.25

(e) Execution No. 07-0006953

Issue Date: 2007-07-27

Amount: $5,788.14

(f) Execution No. 08-0004178

Issue Date: 2008-04-21

Amount $43,825.84

(g) Execution No. 08-0007138

Issue Date: 2007-11-16

Amount $1,600.00

THIS COURT FURTHER ORDERS that any monies which the Plaintiffs obtain as a result of refinancing the property municipally known as 475 Rustic Road, Toronto, Ontario which are not required to discharge the first mortgage in favour of National Trust Company registered as Instrument No. TB980325 and the second mortgage in favour of Lillian Toffoli registered as Instrument No. AT445821 shall be paid

to the Accountant of the Ontario Superior Court of Justice pending a further order of this Court.

THIS COURT FURTHER ORDERS no costs on this motion.

Attached hereto as **Exhibit "F"** is a copy of said Order.

11. I confirm and I have been advised by Carmelina the following:

(a) That we never entered into a mortgage agreement with the Defendant;

(b) We never signed any documentation with respect to the mortgage; and

(c) We never benefited from the mortgage.

12. I confirm I have been advised by Carmelina that despite the Order of Madam Justice Kelly, Home Trust decided not to finalize the mortgage. As a result, we proceeded to sell our Property. Attached hereto as **Exhibit "G"** is a copy of said Agreement of Purchase and Sale.

13. I confirm that Carmelina and myself agree to pay into Court the balance of the funds from the sale proceeds of the Property, subsequent to any and all expenses associated with the sale including real estate commission unpaid utilities and the First and Second Mortgages being satisfied.

14. As a consequence of the Defendant's Mortgage being registered on title, Carmelina and myself are unable to sell the Property to satisfy the First and Second Mortgages, it is likely we would lose our Property to the first mortgagee's Power of Sale proceedings if the injunction sought in these proceedings is not granted. Accordingly, the Defendant's interference with Carmelina's and myself's Property would result in harm to us, which would not be capable of being compensated in money damages.

15. I verily believe that there would be no prejudice to the execution creditors if their respective writs of execution are postponed due to the following:

(a) The result of the herein motion is no different than that achieved by the Order of Honourable Madam Justice Kelly dated February 26, 2009;

(b) All excess funds as stated above, from the sale of the Property will be paid into Court until the conclusion of the herein action;

(c) If the Plaintiffs are successful in defending the Defendant's Mortgage, the execution creditors will benefit from receiving a larger share of the excess funds from the sale of the Property;

(d) No execution creditor has taken steps to realize on their Writs of Execution.

16. I have been advised by my counsel and verily believe that pursuant to the *Family Law Act* the surplus monies from the sale of the matrimonial home are to be divided equally between myself and Carmelina.

17. I, hereby undertake to abide by any order concerning damages that a Court may make if it would ultimately appear that the granting of this injunction has caused damage to the Defendant for which the Plaintiffs ought to compensate them.

18. I make this affidavit in support for the herein motion and for no other or improper purpose.

SWORN BEFORE me at the City of Toronto, in the Province of Ontario, this day of March, 2009.

DOMENIC CARCHIDI

A Commissioner, etc.

Court File No. CV-09-371488

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
MADAM JUSTICE KELLY

) **THURSDAY, THE 26TH DAY OF**
) **FEBRUARY, 2009**

This is Exhibit F *referred to in the affidavit of* Domenic Carchidi *sworn before me, this* 24th *day of* March *20* 09

A COMMISSIONER FOR TAKING AFFIDAVITS

BETWEEN:

DOMENIC CARCHIDI and CARMELINA CARCHIDI

Plaintiffs

-and-

DOREEN TENNINA

Defendants

ORDER

THIS MOTION, made by the Plaintiff for an interlocutory and permanent injunction pursuant to Section 101, Courts of Justice Act, to remove the mortgage/charge registered as Instrument No. AT1035243, from the property municipally as 475 Rustic Road, Toronto, Ontario, including deleting the said charge from the Register was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING, the Motion Record, the Supplementary Affidavits of Domenic Carchidi and Carmelina Carchidi sworn February 11, 2009, the Affidavits Doreen Tennina and Lucy Cariglia sworn February 25, 2009 and the attached exhibits, and upon being advised of the Consent of the Plaintiffs and Defendants, no one appearing for the execution creditors although properly served:

1. **THIS COURT ORDERS** that the mortgage in favour of Doreen Tennina registered as Instrument No. AT1035243, shall be postponed to allow the Home Trust Mortgage, Loan No. 369312, to be registered on the property municipally known as 475 Rustic Road, Toronto, Ontario, described as follows:

   PT LT 9, PL 4842 North York as in TB980324; S/T Execution – 91-014873, If enforceable; Toronto (N.York), City of Toronto, being PIN No. 10273-0166 Ltd;

2. **THIS COURT FURTHER ORDERS** an interlocutory and permanent injunction to postpone the following writs of execution registered as against the Plaintiff, Domenic Carchidi to allow the Home Trust Mortgage, Loan No. 369312, to be registered on the Property:

   (a) Execution No. 04-0001962
   Issue Date: 2003-09-04
   Amount: $25,128.17

   (b) Execution No. 04-0006394
   Issue Date: 2004-10-13
   Amount: $19,540.06

(c) Execution No. 06-0006140

Issue Date: 2006-07-18

Amount: $23,846.58

(d) Execution No. 07-0002133

Issue Date: 2007-03-09

Amount: $9,698.25

(e) Execution No. 07-0006953

Issue Date: 2007-07-27

Amount: $5,788.14

(f) Execution No. 08-0004178

Issue Date: 2008-04-21

Amount $43,825.84

(g) Execution No. 08-0007138

Issue Date: 2007-11-16

Amount $1,600.00

3. **THIS COURT FURTHER ORDERS** that any monies which the Plaintiffs obtain as a result of refinancing the property municipally known as 475 Rustic Road, Toronto, Ontario which are not required to discharge the first mortgage in favour of National Trust Company registered as Instrument

No. TB980325 and the second mortgage in favour of Lillian Toffoli registered as Instrument No. AT445821 shall be paid to the Accountant of the Ontario Superior Court of Justice pending a further order of this Court.

4. **THIS COURT FURTHER ORDERS** no costs on this motion.

ENTERED AT/INSCRIT A TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

FEB 26 2009

PER/PAR: