

EXHIBIT “B”

Present: Hon. _____, J.S.C.

At an IAS Part _____, of the Supreme Court of the State of New York, held in and for the County of Westchester, at the County Court House therein, on the ___ day of _____, 2018.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
NEW YORK COMMUNITY BANK,

Plaintiff,

-against-

ELIM PROPERTIES, INC., STATE OF NEW YORK, CITY OF NEW YORK, ABC COMPANIES 1-20, AND JOHN DOES 1-20,

Defendants.
-----X

Index No. 53329/2018

**EX PARTE ORDER APPOINTING A
TEMPORARY RENT RECEIVER**

Upon the Summons, Verified Complaint, filed together with a Notice of Pendency of this action in the Office of the Westchester County Clerk, and upon reading the Affirmation of Jessica Macarone, Esq., affirmed on May 4, 2018, and the Affidavit of Lisa Delfoe, duly sworn to on May 4, 2018 (the "Delfoe Affidavit"), and it appearing to the satisfaction of the Court that this action was brought to foreclose a mortgage lien upon certain property situate in the County of Westchester and State of New York, which property is described in Exhibit A attached hereto; that in and by said Mortgage¹ and the ALR, it was covenanted that if default should be made in the payment of the principal sum or of the interest which should accrue thereon, or any part of either, at the respective times therein specified for the payment thereof, the license of the mortgagor to collect the rents and profits issuing from the subject property was thereby

¹ Capitalized terms not defined herein have the meanings set forth in the Delfoe Affidavit.

revocable; and it was further covenanted that the mortgagee should be at liberty immediately after any such default, upon commencement of proceedings for the foreclosure of said mortgage, to apply for the appointment of a receiver of the rents and profits of said property without notice, and that the mortgagee should be entitled to the appointment of such receiver as a matter of right, without consideration of the value of the property; that said Mortgage is in default for, among other things, the Borrower's failure to pay all sums outstanding on the August 1, 2017 maturity date; and that the subject property is currently occupied and rented; and that the appointment of a temporary receiver of the rents and profits of said property is necessary for the protection of the Plaintiff, New York Community Bank (the "Plaintiff");

NOW, on the ex parte application of McCarter & English, LLP, attorneys for the Plaintiff, it is:

ORDERED, that _____ of

_____ (the "Receiver") be and hereby is appointed, until further order of this Court, with the usual powers and directions, Receiver for the benefit of the Plaintiff of all the rents and profits now due and unpaid or to become due during the pendency of this action and issuing out of the property referenced in the Verified Complaint and described in Exhibit A, attached hereto (the "Property"); and it is further

ORDERED, that said Receiver, prior to engaging in any action that may result in expenses being incurred, be and hereby is directed to contact Plaintiff's attorney to ascertain the status of the foreclosure action and whether he/she should proceed with his/her duties; and it is further

ORDERED, that before entering upon his/her duties said Receiver shall be sworn to fairly and faithfully discharge the trust committed to him/her and shall execute to the People of this State and file with the Clerk of this Court a Bond with sufficient sureties, in the penal sum of _____ (\$ _____) Dollars, conditioned for the faithful performance of his/her duties as such Receiver; and it is further

ORDERED, that said Receiver be and hereby is directed to manage the Property, and to demand, collect and receive from the tenant or tenants in possession of said Property, or other persons liable therefor, all the rents, issues and profits thereof now due and unpaid or hereafter to become due; and that said Receiver be and hereby is authorized, upon prior consent of Plaintiff: (a) to institute and carry on all legal proceedings necessary for the protection of said Property or to recover possession of the whole, or any part thereof; (b) to fix reasonable rental value and to apply to the Court to compel tenants and occupants to attorn to the Receiver; (c) to institute and prosecute suits for the collection of rents and other charges now due or hereafter to become due, and summary proceedings for the removal of any tenant or tenants or other persons therefrom; and (d) to employ a licensed managing agent to assist him/her in carrying out the aforesaid duties, provided, however, that said managing agent must first be approved by the Court; and it is further

ORDERED, that said Receiver shall forthwith deposit all moneys received by him/her at the time he/she receives the same in his/her own name as Receiver in a segregated account in a bank insured by the FDIC, which account shall be established under the federal taxpayer identification number of Defendant Elim Properties, Inc., and that Defendant Elim Properties, Inc., shall provide its federal taxpayer identification number and any other required documentation to the Receiver for purposes of same, however, the foregoing provision shall not

constitute a determination as to the ownership of or entitlement to the rents; and no withdrawals shall be made from the foregoing account except for monthly operating expenses; and the said depository shall send monthly statements of deposits in and withdrawals from the said account to the said Receiver, who shall provide a copy of same to Plaintiff's counsel; and that said Receiver, by the fifteenth (15th) day of each month, shall provide a monthly accounting to Plaintiff, through its counsel, beginning with the date of this Order and monthly thereafter during the term of the receivership; and it is further

ORDERED, that the Receiver be and hereby is authorized (a) to rent or lease any part of the Property, provided however, that such leases shall be subject to the prior consent of Plaintiff; (b) to maintain all necessary and routine insurance for the Property, including, but not limited to, insurance against casualty, fire loss, public liability, Worker's Compensation, etc.; (c) to pay taxes, including past due taxes to the extent sufficient rents are collected, municipal assessments and water and sewer charges due thereon; (d) to pay all ordinary and necessary costs of operating the Property, including, but not limited to, reasonable and necessary ordinary repairs not to exceed \$5,000 without prior consent of Plaintiff; and (e) otherwise to do all things necessary for the due care and proper management of the Property; and it is further

ORDERED, that Defendant Elim Properties, Inc., its members, agents, managers, servants and employees, or any party in possession thereof, shall immediately turn over to the Receiver all of the monies now on deposit with them as rent security, to be held by the Receiver in a separate account in a bank insured by the FDIC, which account shall be established under the federal taxpayer identification number of Defendant Elim Properties, Inc., and that Defendant Elim Properties, Inc., shall provide its federal taxpayer identification number and any other required documentation to the Receiver for purposes of same, however, the foregoing provision

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