

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE HAINEY

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)  
)

THURSDAY, THE 3<sup>RD</sup>  
DAY OF SEPTEMBER, 2020

**2478888 ONTARIO INC.**

Applicant

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Respondent

**ORDER  
(Disclaiming Purchase Agreements, Approving the Receiver's Activities and Fees)**

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") without security, of the undertaking, property and assets of 3070 Ellesmere Developments Inc. (the "**Debtor**") for an order, *inter alia*, approving of the disclaimer of the Purchaser Agreements (as defined in the Report of the Receiver dated August 13, 2020, the "**Receiver's Second Report**"), an Order approving the fees and activities of the Receiver and its counsel and an Order sealing the Confidential Appendices to the Receiver's Second Report, was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Receiver's Second Report, the Supplement to the Receiver's Second Report dated September 2, 2020, the Fee Affidavit of Bryan Tannenbaum, sworn August 5, 2020, the Fee Affidavit of Joseph Fried, sworn August 6, 2020, the Fee Affidavit of Rebecca L.

Kennedy sworn August 10, 2020, and the written submissions of the Trust Claim Plaintiffs (as that term is defined in the Supplement to the Receiver's Second Report) and on hearing the submissions of counsel for the Receiver, and all other parties listed on the Counsel Slip, no one else appearing for any other person, although all parties appearing on the Service List in this proceeding were duly served as it appears from the Affidavit of Service of Bobbie-Jo Brinkman sworn September 1, 2020:

### **SERVICE**

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record including the Receiver's Second Report is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms used herein and not otherwise defined are as defined in the Receiver's Second Report.

### **PURCHASE AGREEMENTS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver's disclaimer of the Purchaser Agreements be and hereby is approved.

3. **THIS COURT ORDERS AND DECLARES** that the Deposit Protocol attached hereto at Schedule "A" is hereby approved.

### **APPROVAL OF ACTIVITIES & FEES**

4. **THIS COURT ORDERS AND DECLARES** that the Receiver's Second Report, the Supplement to the Receiver's Second Report, and all of the activities of the Receiver described therein are hereby ratified and approved.

5. **THIS COURT ORDERS AND DECLARES** that the Receiver's Borrowings Charge (as defined in the Receivership Order) is increased by \$255,000 to a total of \$755,000, *nunc pro tunc*.

6. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver and its counsel, as set out in the fee affidavits of Bryan A. Tannenbaum, sworn August 5, 2020, of Joseph Fried, sworn August 6, 2020, and the of Rebecca L. Kennedy sworn August



10, 2020, are hereby approved, and the Receiver is authorized and directed to pay all such fees which remain unpaid at this time.

### **SEALING OF CONFIDENTIAL SCHEDULES**

7. **THIS COURT ORDERS** that Confidential Schedules 1-8, inclusive, to the Receiver's Second Report shall be, and are, hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

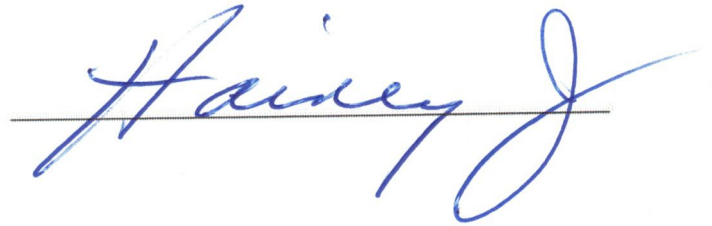
### **GENERAL**

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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 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.

10. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

11. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service.

A handwritten signature in blue ink, appearing to read "Hainey J", is written over a horizontal line. The signature is fluid and cursive.



## **Schedule "A"**

### **Deposit Refund Protocol**

#### **3070 Ellesmere Developments Inc.**

- 1) For each unit of the project that was to have been constructed at 3070 Ellesmere Road, Toronto, Ontario (the "Project"), for which a deposit has been refunded to a purchaser (a "Purchaser") as of the date hereof, Harris, Sheaffer LLP ("Harris Sheaffer") will assemble the documents listed below (if available) in a single binder organized by unit number (the "Pre-Protocol Closing Binder").
  - a) Executed Release and Termination Agreements or Termination Letter
  - b) A Copy of the First Page of the Unit Agreement of Purchase and Sale ("APS")
  - c) A Copy of any Assignment of the APS by the Purchaser
  - d) Copies of any Form 4
  - e) Receipts of Deposits
  - f) Written Acknowledgment executed by Purchaser Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction

Harris Sheaffer will deliver electronically to Tarion Warranty Corporation ("Tarion"), RSM Canada Limited, in its capacity as receiver of 3070 Ellesmere Developments Inc. (the "Receiver"), and Westmount Guarantee Services Inc. on behalf of Aviva Insurance Company of Canada ("Aviva"): (a) the Pre-Protocol Closing Binder; and (b) a ledger in respect of the Project of: (i) deposits paid to Harris Sheaffer (including Deposits (as defined below)) released; and (ii) deposits paid to Harris Sheaffer (including Deposits) not released.

- 2) Harris Sheaffer will in a reasonable time frame provide to Tarion the Statutory Declaration in the form attached as Schedule "A" hereto in respect of the deposits refunded to Purchasers as of the date hereof.
- 3) The Receiver will provide to Tarion the Statutory Declaration in the form attached as Schedule "B" hereto in respect of the Project.
- 4) The Receiver will request that the principal (the "Principal") of 3070 Ellesmere Developments Inc. provide to Tarion the Statutory Declaration in the form attached as Schedule "C" hereto. Failure by the Principal to provide such Statutory Declaration will not prevent the refund of the Deposits to the Purchasers.
- 5) Harris Sheaffer will send an email or letter to Purchasers of Units for which deposits have not been refunded as at the date hereof notifying them that they may obtain a refund of their deposits and the instructions for them to do so. These instructions will include requirements that Purchasers execute a Release and Termination Agreement, provide Photo Identification, a mailing address and a Receipt. A copy of such email or letter will be provided to Tarion, the Receiver and Aviva. Failure by Purchasers to comply with the foregoing requirements will not prevent the refund of the Deposits to the Purchasers; provided, however, that such Purchasers will be required to provide at least a Written Acknowledgment Confirming the



Amount of Monies Refunded and Termination of the Purchase Transaction prior to the refund of the Deposits to the Purchasers.

- 6) Purchasers will comply with such instructions (unless they refuse to do so and only provide a Written Acknowledgment Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction), including returning their executed Release and Termination Agreement along with Photo Identification to Harris Sheaffer, which items Harris Sheaffer will forward to Aviva.
- 7) From time to time, Harris Sheaffer will assemble the documents listed below (if available) in a single binder organized by unit number for each of the Deposits refunded after the date hereof at such time ("Closing Binders").
  - a) Executed Release and Termination Agreements
  - b) A Copy of the First Page of the Unit Agreement of Purchase and Sale ("APS")
  - c) A Copy of any Assignment of the APS by the Purchaser
  - d) Copies of any Form 4
  - e) Receipts of Deposits
  - f) Written Acknowledgment executed by Purchaser Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction
  - g) An Updated Summary of the Deposits Released and Remaining

Closing Binders shall be delivered electronically to Tarion, the Receiver and Aviva.

- 8) After Tarion receives the most recent Closing Binder, Tarion will within ten business days of receipt, confirm by email to Aviva that the documentation is complete such that Tarion's liability to the relevant Purchasers for claims in respect of their respective Deposits will be extinguished once Harris Sheaffer releases the Deposit to the Purchaser. "Deposit" means any amount that would be a valid deposit claim under the *Ontario New Home Warranties Plan Act* (up to a maximum of \$20,000 per home).
- 9) After Aviva receives the email from Tarion referred to in the paragraph above, Harris Sheaffer will then advise Purchasers that their deposit refund cheques (including the funds relating to the applicable Deposit) made out to the Purchaser(s) named in the APS or any permitted assignee or designee so designated in writing will be mailed to the address provided by the Purchasers or permitted assignee or permitted designee. Cheques will be made out to the name of: (i) the Purchaser(s) shown on the APS; (ii) a permitted assignee(s); or (iii) a permitted designee(s).
- 10) Upon release of Deposits, Harris Sheaffer will provide in a reasonable time frame to Tarion a Statutory Declaration in the form attached as Schedule "A" in respect of such refunded deposits.
- 11) From time-to-time, and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Aviva that the surety bond provided in respect of the Project (the "Tarion Bond") is reduced by the relevant amount on a unit-by-unit basis.

- 12) Harris Sheaffer will, every month, provide Tarion, the Receiver and Aviva with a ledger of:
  - (i) deposits paid to Harris Sheaffer (including Deposits released); and
  - (ii) deposits paid to Harris Sheaffer (including Deposits) not released.
  
- 13) Once all Deposits have been returned to Purchasers and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will correspondingly reduce the amount of the Tarion Bond; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond to cover Tarion's liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished at the time of any reduction. Upon being satisfied that its liability in respect of amounts secured by the Tarion Bond has been extinguished, Tarion will return the Tarion Bond to Aviva for cancellation.



**Schedule "A"**

**STATUTORY DECLARATION**

CANADA )  
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 )  
PROVINCE OF ONTARIO )  
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TO WIT: )

I, of the City of ■, DO SOLEMNLY DECLARE THAT:

1. Harris, Sheaffer LLP is the escrow agent for the Vendor and Westmount Guarantee Services Inc. pursuant to a Deposit Trust Agreement.
2. I am President of GH Harris Professional Corporation, an incorporated partner of Harris, Sheaffer LLP, and as such have knowledge of the matters declared herein.
3. All deposits paid to Harris, Sheaffer LLP under agreements of purchase and sale in respect of Project units numbered \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ have been refunded to the respective purchasers of such units or their permitted assignees or permitted designees by Harris Sheaffer LLP.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

**DECLARED BEFORE ME** in )  
City of Toronto, in the Province of )  
Ontario, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2020. )  
 )  
 )  
 )  
\_\_\_\_\_)  
A COMMISSIONER, ETC. )

\_\_\_\_\_  
Name:  
Title:



**Schedule "B"**

**STATUTORY DECLARATION**

CANADA	)	IN THE MATTER OF the proposed development (the "Project") by 3070 Ellesmere Developments Inc. (the "Vendor") situated in the City of Toronto on those lands and premises owned by the Vendor located at 3070 Ellesmere Road, Toronto, Ontario
	)	
PROVINCE OF ONTARIO	)	
	)	
	)	
	)	
	)	
	)	
TO WIT:	)	
	)	

I, ■, of the City of ■, DO SOLEMNLY DECLARE THAT:

1. I am a ■ of RSM Canada Limited, the receiver appointed in respect of the Vendor.
2. The Vendor is not proceedings with the Project that the Vendor had proposed to construct on the lands and premises described above.
3. To the best of my knowledge and belief (which is based on information provided by the Vendor): (i) the Vendor entered into ■ (■) agreements of purchase and sale with respect to units in the Project (collectively, the "**Condominium Sales Agreements**"); (ii) aside from the Condominium Sales Agreements, no other agreements of purchase and sale have been entered into in respect of the Project or the lands and premises described above; and (iii) nothing has come to my attention that would suggest that sales of units in the Project were agreed to other than pursuant to the Condominium Sales Agreements.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

**DECLARED BEFORE ME** in )  
City of Toronto, in the Province of )  
Ontario, this \_\_\_\_ day of )  
  
\_\_\_\_\_, 2020. )  
)  
)  
  
\_\_\_\_\_)  
A COMMISSIONER, ETC. )

\_\_\_\_\_  
Name:  
Title:







IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

2478888 ONTARIO INC.

Applicant

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Respondent

Court File No.: CV-19-00627187-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

**ORDER**  
(Disclaiming Purchase Agreements, etc.)

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Lawyers for RSM Canada Limited, as Receiver



