

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 3<sup>RD</sup>

JUSTICE HAINEY

)

)

DAY OF SEPTEMBER, 2020

**2478888 ONTARIO INC.**

Applicant

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Respondent

**ORDER**  
**(Approval and Vesting Order)**

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 the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated May 14, 2020, as amended (the “**Sale Agreement**”) between the Receiver, Podium Acquisition Corp. and its assignee 3070 Ellesmere LP by its general partner 3070 Ellesmere GP Inc. (the “**Purchaser**”) and appended to the Report of the Receiver dated August 13, 2020, the “**Receiver’s Second Report**”), and vesting in the Purchaser, the Receiver’s and 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 judicial videoconference due to the COVID-19 crisis.

ON READING 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 properly served as appears from the affidavit of service of Bobbie-Jo Brinkman sworn September 1, 2020, filed:

## **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.

## **APPROVAL OF THE TRANSACTION**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement, the Assignment Agreement, and the amendments to the Sale Agreement dated July 20, 2020 and August 5, 2020, 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 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 Receiver's and the Debtor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (statutory or otherwise), easements, rights of first refusal or first offer, title retention agreements or arrangements, conditional sales, restrictive covenants, 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 agreements of purchase and sale to acquire individual

units intended to be constructed on the Purchased Assets and any deposits paid with respect to same; (ii) any encumbrances or charges created pursuant to any Order made in these proceedings; and (iii) 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 (iv) those Claims listed on **Schedule B** hereto (collectively, the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule C** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets, including the real property identified in **Schedule D** hereto (the “**Real Property**”) are hereby expunged and discharged as against the Purchased Assets and are not enforceable and are non-binding as against the Purchaser.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto No. 66 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 ordered and directed to enter 3070 Ellesmere Facility Inc. as the registered owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all Encumbrances, including the Claims, and vacating the orders, listed in **Schedule B** hereto, but excluding the Permitted Encumbrances 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 only 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 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.

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 this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

10. **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", is written over a horizontal line. The signature is stylized and cursive.

**Schedule A – Form of Receiver’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**2478888 ONTARIO INC.**

Applicant

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the “**Court**”) dated September 13, 2019, RSM Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of 3070 Ellesmere Developments Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of May 14, 2020, as amended (the “**Sale Agreement**”) between the Receiver, Podium Acquisition Corp. and 3070 Ellesmere GP Inc. in its capacity as general partner for and on behalf of 3070 Ellesmere LP (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Receiver’s and the Debtor’s 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 sections 4.1 and 4.3 of the Sale Agreement have been satisfied or waived by the Receiver

or the Purchaser, as applicable; 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 sections 4.1 and 4.3 of the Sale Agreement have been satisfied or waived by the Receiver or the Purchaser, as applicable; 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].

**RSM Canada Limited, in its capacity as  
Receiver of the undertaking, property and  
assets of 3070 Ellesmere Developments Inc.,  
and not in its personal capacity**

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

Name:

Title:

**Schedule "B"**  
**INSTRUMENTS TO BE DELETED FROM PIN NO. 06186-0033 (LT)**

**PIN 06186-0033 (LT):**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties From</b>	<b>Parties To</b>
AT4343080	2016/09/15	Charge	3070 Ellesmere Developments Inc.	<ul style="list-style-type: none"> <li>• Toronto Capital Corp.</li> <li>• 2478888 Ontario Inc.</li> <li>• 1220356 Ontario Limited</li> <li>• Tenebaum, Larry</li> <li>• 768124 Ontario Inc.</li> <li>• Taragar Holdings Limited</li> <li>• Howieco Entertainment Inc.</li> <li>• Misim Investments Limited</li> <li>• C.H.B.P. Investments Inc.</li> <li>• The Salz Corporation</li> <li>• Usher, Randi</li> <li>• Sone, Ellen</li> <li>• Appel, Aubrie</li> <li>• Appel, Gail</li> <li>• Sone, Lawrence</li> </ul>
AT4343088	2016/09/15	Notice of assignment of rents - general	3070 Ellesmere Developments Inc.	<ul style="list-style-type: none"> <li>• Toronto Capital Corp.</li> <li>• 2478888 Ontario Inc.</li> <li>• 1220356 Ontario Limited</li> <li>• Tenebaum, Larry</li> <li>• 768124 Ontario Inc.</li> <li>• Taragar Holdings Limited</li> <li>• Howieco Entertainment Inc.</li> <li>• Misim Investments Limited</li> <li>• C.H.B.P. Investments</li> </ul>

Instrument No.	Date	Instrument Type	Parties From	Parties To
				Inc. <ul style="list-style-type: none"> <li>• The Salz Corporation</li> <li>• Usher, Randi</li> <li>• Sone, Ellen</li> <li>• Appel, Aubrie</li> <li>• Appel, Gail</li> <li>• Sone, Lawrence</li> </ul>
AT4511551	2017/03/15	Charge	3070 Ellesmere Developments Inc.	2518358 Ontario Inc.
AT4868408	2018/05/18	Transfer of Charge	<ul style="list-style-type: none"> <li>• Toronto Capital Corp.</li> <li>• 2478888 Ontario Inc.</li> <li>• 1220356 Ontario Limited</li> <li>• Tenebaum, Larry</li> <li>• 768124 Ontario Inc.</li> <li>• Taragar Holdings Limited</li> <li>• Howieco Entertainment Inc.</li> <li>• Misim Investments Limited</li> <li>• C.H.B.P. Investments Inc.</li> <li>• The Salz Corporation</li> <li>• Usher, Randi</li> <li>• Sone, Ellen</li> <li>• Appel, Aubrie</li> <li>• Appel, Gail</li> <li>• Sone,</li> </ul>	2478888 Ontario Inc.

Instrument No.	Date	Instrument Type	Parties From	Parties To
			Lawrence	
AT4868438	2018/05/22	Notice of assignment of rents - general	<ul style="list-style-type: none"> <li>• Toronto Capital Corp.</li> <li>• 2478888 Ontario Inc.</li> <li>• 1220356 Ontario Limited</li> <li>• Tenebaum, Larry</li> <li>• 768124 Ontario Inc.</li> <li>• Taragar Holdings Limited</li> <li>• Howieco Entertainment Inc.</li> <li>• Misim Investments Limited</li> <li>• C.H.B.P. Investments Inc.</li> <li>• The Salz Corporation</li> <li>• Usher, Randi</li> <li>• Sone, Ellen</li> <li>• Appel, Aubrie</li> <li>• Appel, Gail</li> <li>• Sone, Lawrence</li> </ul>	2478888 Ontario Inc.
AT5022246	2018/12/03	Charge	3070 Ellesmere Developments Inc.	Scougall Management (1987) Limited
AT5055775	2019/01/16	Notice	3070 Ellesmere Developments Inc.	Scougall Management (1987) Limited

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties From</b>	<b>Parties To</b>
AT5070485	2019/02/04	Application (General)  Certificate Pending Litigation	Du, Xiuhong Chen, Yunduan Xu, Guohua	N/A
AT5101901	2019/03/26	Restrictions Order	Ontario Superior Court of Justice	2449880 Ontario Inc.
AT5158441	2019/06/12	Lien	Her Majesty The Queen In Right of Canada As Represented By The Minister Of National Revenue	N/A
AT5257949	2019/10/08	Application for Court Order	Ontario Superior Court of Justice	RSM Canada Limited

**Schedule "C"**  
**PERMITTED ENCUMBRANCES FROM PIN NO. 06186-0033 (LT)**

**(NOT TO BE DELETED)**

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties To</b>
A244876	1968/07/04	Development Agreement	The Corporation of the Borough of Scarborough
A256117	1968/12/03	Subdivision Control By-law	N/A
A773362	1979/06/18	Application to Register Notice of Agreement (Requirement of Site Plan)	N/A
66R4105	1979/07/04	Plan Reference	N/A

**Schedule "D"**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

PCL J-1 SECT M1227 BLK J PLAN 66M1227, CITY OF TORONTO as set out in PIN 06186-0033 (LT)

**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  
(Approval and Vesting Order)**

**THORNTON GROU T FINNIGAN LLP**

TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, Ontario M5K 1K7  
Fax: (416) 304-1313

**D.J. Miller (LSO# 34393P)**

Tel: (416) 304-0559 / Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

**Rebecca L. Kennedy (LSO# 61146S)**

Tel: (416) 304-0603 / Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Alexander Soutter (LSO#72403T)**

Tel: (416) 304-0595 / Email: [asoutter@tgf.ca](mailto:asoutter@tgf.ca)

Lawyers for RSM Canada Limited, as Receiver