

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
JUSTICE H.J. WILTON-SEAR)

WEDNESDAY, THE 14TH)
DAY OF NOVEMBER, 2018)

HWS

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

- and -

APARTMENTS FOR LIVING FOR PHYSICALLY HANDICAPPED ASSOCIATION

Respondent

APPLICATION FOR A WINDING-UP ORDER AND THE APPOINTMENT OF A
RECEIVER AND LIQUIDATOR PURSUANT TO THE *CORPORATIONS ACT*, R.S.O. 1990,
c C.38 AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c C.43

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver and liquidator (the "Receiver") of all of the assets, undertakings and properties of Apartments For Living For Physically Handicapped Association ("ALPHA"), including all proceeds thereof (collectively, the "Property") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Redstone Living Inc. (the "Purchaser") made as of September 13, 2018, as amended by Amending Agreement dated as of November 1, 2018, each as appended to the

Report of the Receiver dated November 8, 2018 (the "Report"), and vesting in the Purchaser ALPHA's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no other persons appearing,

1. 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.

2. 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 all of ALPHA's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on 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 Order of the Honourable Justice Hainey dated July 5, 2018; (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.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Essex (Windsor) (#12) 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.

4. 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.

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

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

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 ALPHA and shall not be void or voidable by creditors of ALPHA, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

7. 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.

W. Mon - hnd J.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-596938-CL

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B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

- and -

APARTMENTS FOR LIVING FOR PHYSICALLY HANDICAPPED ASSOCIATION

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated July 5, 2018, RSM Canada Limited was appointed as the receiver and liquidator (the "Receiver") of all of the assets, undertakings and properties of Apartments For Living For Physically Handicapped Association ("ALPHA"), including all proceeds thereof (collectively, the "Property") for the purpose of winding up ALPHA’s affairs and distributing its Property

B. Pursuant to an Order of the Court dated November 14, 2018, the Court approved the agreement of purchase and sale dated September 13, 2018, as amended by Amending Agreement dated as of November 1, 2018 (the "Sale Agreement") between the Receiver and Redstone Living Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Receiver’s and ALPHA’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 section 16 of 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 section 16 of 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 at _____ [TIME] on _____ [DATE].

**RSM Canada Limited, solely in its capacity as
Court-appointed Receiver and Liquidator of
Apartments For Living For Physically
Handicapped Association and not in its
personal or corporate capacity and without
personal or corporate liability**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

All of the Receiver's (if any) and ALPHA's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 3185 Forest Glade Drive, Windsor, ON

LEGAL DESCRIPTION: PCL BLK M-1 SEC M77; PT BLK M PL M77 PT 2 12R3596 WINDSOR; S/T TO A RIGHT IN FAVOUR OF GEORGE WIMPEY CANADA LIMITED FOR ITSELF, ITS SUCCESSORS, SERVANTS, AGENTS AND ASSIGNS, UNTIL APPROVAL BY THE COMMISSIONER OF WORKS OF THE CITY OF WINDSOR, THE RIGHT TO ENTER THE LANDS INCLUDED HEREIN WITHOUT CHARGE, TO MAKE MODIFICATIONS OF THE SURFACE DRAINAGE FEATURES OF THE SAID LANDS AS MAY BE NECESSARY TO HAVE THE SURFACE DRAINAGE FEATURES COMPLY WITH THE DRAINAGE PATTERNS ESTABLISHED BY THE CORPORATION OF THE CITY OF WINDSOR

ROLL NUMBER: 3739-070-830-01800-0000

PIN: 01387-0011 (LT)

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

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. LT55522 registered on December 30, 1980, being a Charge in favour of Canada Mortgage and Housing Corporation in the principal amount of \$790, 987.00.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;
10. The following instruments registered on title to the Property:
 - i. Instrument No. LT2350 registered on February 3, 1970, being a Notice re airport zoning regulations;

- ii. Instrument No. LT20596 registered on October 28, 1975, being a By-law;
 - iii. Instrument No. LT30268 registered on June 30, 1977, being the Transfer to ALPHA;
 - iv. Instrument No. LT35516 registered on May 1, 1978, being a Notice of a decision;
 - v. Instrument No. LT58811 registered on October 27, 1981, being a Notice re amendment to zoning regulations;
 - vi. Instrument No. LT58812 registered on October 27, 1981, being a Notice re amendment to zoning regulations; and
11. Instrument No. CE603388 registered on March 17, 2014, being a By-law regarding part-lot control.

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PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Tel: 416-863-1188
Fax: 416-863-0305

Lawyers for the Receiver, RSM Canada Limited

RCP-E 4C (May 1, 2016)