

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

THE HONOURABLE MADAM) THURSDAY, THE 1st
JUSTICE CONWAY)
) DAY OF DECEMBER, 2022

B E T W E E N:

2478888 ONTARIO INC.

Applicant

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Respondent

**ORDER
(Approval of Activities and Fees, Distribution and Discharge)**

THIS MOTION, made by RSM Canada Limited, ("**RSM**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), of all property, assets and undertakings (collectively, the "**Property**") of 3070 Ellesmere Developments Inc. (the "**Company**" or the "**Debtor**") for an order:

- a) Abridging the time for service and filing of this notice of motion and the motion record, authorizing service via electronic mail and dispensing with further service of same;
- b) Authorizing and directing the Receiver, on behalf of the Company, to distribute the Holdback Amount (as defined in the Third Report) to 2615333 Ontario Inc. ("**261**");
- c) Approving the conduct and activities of the Receiver as set out in the Third Report of the Receiver dated October 14, 2022 (the "**Third Report**");
- d) Approving the Receiver's interim statement of receipts and disbursements for the period September 27, 2019 to September 30, 2022 (the "**R&D**");
- e) Approving the fees and disbursements of the Receiver and its counsel Thornton Grout Finnigan LLP ("**TGF**") as set out in the affidavit of Bryan A. Tannenbaum sworn October 13, 2022 (the "**Tannenbaum Affidavit**"), affidavit of Rebecca L. Kennedy sworn October 12, 2022 (the "**Kennedy Affidavit**" and together with the Tannenbaum Affidavit, the "**Fee Affidavits**") for the period of time set out therein, plus an accrual to complete the Remaining Duties (as defined in the Third Report); and
- f) Terminating these proceedings and discharging RSM from the powers, duties and obligations attendant to its appointment as Receiver upon the filing of the Receiver's Discharge Certificate.

ON READING the Third Report, and on hearing the submissions of counsel for the Receiver, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Parent sworn October 18,

2022, filed:

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated such that this Motion is properly returnable today, hereby dispenses with further service thereof, and authorizes substitute service via electronic mail.

DISTRIBUTION OF HOLDBACK AMOUNT

2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute the Holdback Amount to 2615333 Ontario Inc.

APPROVAL OF THE RECEIVER'S REPORT AND ACTIVITIES

3. **THIS COURT ORDERS** that the Third Report and the activities and conduct of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

RECEIPTS AND DISBURSEMENTS

4. **THIS COURT ORDERS** that Receiver's interim statement of receipts and disbursements for the period September 27, 2019 to September 30, 2022 be and are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and the fees and disbursements of TGF, as set out in the Fee Affidavits be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Norton Rose Fulbright Canada LLP, estimated not to exceed \$40,000, plus HST, for the completion of the remaining activities in connection with the receivership, are hereby approved.

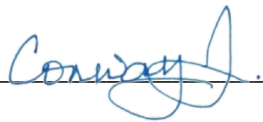
RECEIVER'S DISCHARGE

7. **THIS COURT ORDERS** that, effective upon the filing of the Receiver of a certificate (the "**Discharge Certificate**") in the form attached hereto as Schedule "A", confirming the completion of the terms and conditions of its discharge have been met, as set out in the Third Report, the Receiver shall be discharged as receiver of all property, assets and undertakings of the Company, provided however that notwithstanding its discharge lien herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of RSM in its capacity as Receiver.

8. **THIS COURT ORDERS AND DECLARES** that upon the filing of the Discharge Certificate, RSM is hereby released and discharged from any and all liability that RSM now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of RSM while acting in its capacity as the Receiver, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, RSM is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

MISCELLANEOUS

9. **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.



Schedule "A" - Form of Receiver's Discharge Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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**

B E T W E E N :

2478888 ONTARIO INC.

Applicant

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Respondent

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

WHEREAS, pursuant to an Order of the Court made on September 13, 2019, effective on September 27, 2019 (the "**Receivership Order**"), RSM Canada Limited ("**RSM**") was appointed as receiver (in such capacity, the "**Receiver**"), of all property, assets and undertakings (collectively, the "**Property**");

AND WHEREAS, pursuant to an Order of the Court dated **[DATE]**, the Court, among other things, ordered that the Receiver shall be discharged as Receiver of all property, assets and undertakings of the Company, as set out in the Receivership Order, upon the filing of the discharge certificate confirming the completion of the terms and conditions of the discharge have been met.

THE RECEIVER CERTIFIES the following:

1. The terms and conditions of the discharge have been met, as set out in the Third Report of the Receiver dated October 14, 2022.

DATED as of [TIME] on the ____ day of _____, 20____.

RSM CANADA LIMITED, solely in its capacity as court-appointed receiver of all property, assets and undertakings of 3070 Ellesmere Developments Inc. and not in its personal capacity

Per:

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.

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

RECEIVER'S DISCHARGE CERTIFICATE

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam LSO# 46735J

Jennifer.stam@nortonrosefulbright.com

Tel: 416-202-6707

Fax: 416-216-3930

Lawyers for the Receiver, RSM Canada Limited

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.

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**ORDER
(Approval of Activities and Fees, Distribution and
Discharge)**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam LSO# 46735J

Jennifer.stam@nortonrosefulbright.com

Tel: 416-202-6707

Fax: 416-216-3930

Lawyers for the Receiver, RSM Canada Limited