

District of: Ontario
Division No.: 09-Toronto
Court No.: 31-2547832
Estate No.: 31-2547832

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
3070 ELLESmere DEVELOPMENTS INC.**

**SUPPLEMENTARY MOTION RECORD
(returnable September 11, 2019)**

September 10, 2019

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Larry Ellis LSO #: 49313K
Tel: 416.869.5406
Fax: 416.262.3543
lellis@casselsbrock.com

Erin Craddock LSO #: 62828J
Tel: 416.860.6480
Fax: 416.644.9324
ecraddock@casselsbrock.com

Lawyers for 3070 Ellesmere Developments
Inc.

TO: **SERVICE LIST**

INDEX

<u>TAB</u>	<u>DOCUMENT</u>	<u>PAGE NO.</u>
1.	Supplementary Affidavit of Tong Liu sworn September 10, 2019	1-2
	<i>Exhibits to Affidavit of Tong Liu</i>	
A.	CRA Agreement (Redacted)	3-11
B.	Listing Agreement – Commercial	12-17

Tab 1

District of: Ontario
Division No.: 09-Toronto
Court No.: 31-2547832
Estate No.: 31-2547832

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
3070 ELLESmere DEVELOPMENTS INC.**

**SUPPLEMENTARY AFFIDAVIT OF TONG LIU
(sworn September 10, 2019)**

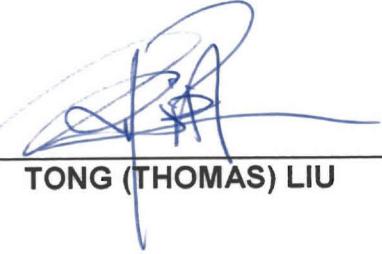
I, Tong (Thomas) Liu, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the sole director and officer of 3070 Ellesmere Developments Inc. ("Ellesmere"). I have knowledge of the matters to which I hereinafter depose, which knowledge is personal to me, obtained from a review of the documents referred to or, where indicated, I am advised by others in which case I believe such information to be true.
2. I swear this affidavit to supplement my affidavit sworn August 29, 2019 (the "Initial Affidavit"). Capitalized terms not otherwise defined herein shall have the meaning given to them in my Initial Affidavit.
3. Attached as Exhibit "A" is a redacted copy of the unexecuted CRA Agreement. Ellesmere will execute the CRA Agreement if the court appoints FAAN as CRA.

4. Attached as Exhibit "B" is a copy of the Listing Agreement – Commercial between Ellesmere and the Sale Process Agent, executed by the Sale Process Agent on September 3, 2019, and by Ellesmere on September 5, 2019.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on September 10, 2019


Commissioner for Taking Affidavits


TONG (THOMAS) LIU

This is **Exhibit “A”** referred to in the Affidavit of **Tong Liu**
sworn September 10, 2019.



Commissioner for Taking Affidavits (or as may be)



20 Adelaide Street East, Unit 920
Toronto, Ontario, M5C 2T6

September ___, 2019

3070 Ellesmere Developments Inc.
1600 16th Ave Unit 1
Richmond Hill, ON L4B 4N6

AND

Tong (Thomas) Liu
c/o LeMine Investment Group Inc.
1600 16th Ave Unit 1
Richmond Hill, ON L4B 4N6

Attention: Mr. Tong (Thomas) Liu

Dear Mr. Liu:

This letter confirms and sets forth the terms and conditions of the engagement of FAAN Advisors Group Inc. ("FAAN") by 3070 Ellesmere Developments Inc. (the "Company"), and the agreement between the Company, FAAN and Tong (Thomas) Liu ("Liu") in his capacity as a director, officer, employee and/or direct or indirect shareholder of the Company and in his personal capacity, including the scope of the services to be performed and the basis of compensation for those services. Upon execution of this letter by each of the parties below and receipt of the retainer described below, this letter will constitute an agreement between the Company, FAAN and Liu (the "Agreement").

1. Description of Services.

- (a) In connection with this engagement, FAAN is to serve as a chief restructuring advisor to the Company (the "CRA"). FAAN, including its personnel, are collectively referred to as the "Engagement Personnel".

2. Duties.

- (a) The CRA shall have authority to direct the operations and management of the Company and the restructuring of the Company and its business. The officers of the Company shall report to the CRA. For greater certainty, the CRA shall be entitled to exercise any powers of the

Company to the exclusion of other persons, including any board member of the Company, in consultation with the Company and Liu.

- (b) The CRA shall review and provide information required by, and serve as a contact with, the Company's financial and legal advisors (including but not limited to Crowe Soberman LLP (the "Proposal Trustee"), Avison Young (the "Sales Process Agent") and Cassels Brock & Blackwell LLP, lenders, creditors and other stakeholders.
- (c) The CRA shall assist the Sales Process Agent and the Proposal Trustee in conducting a Court-approved sales process for the Company's property;
- (d) The CRA shall perform such other services as customarily provided by the chief restructuring officer of a company, and agreed to by FAAN that is not duplicative of work others are performing for the Company.

3. Information Provided by Company and Forward Looking Statements. The Company shall: (i) provide the CRA with access to management and other representatives of the Company; and (ii) furnish all data, material and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company that the Engagement Personnel reasonably request in connection with the services to be provided to the Company. The Engagement Personnel shall rely, without further independent verification, on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by Engagement Personnel in connection with the services performed for the Company. The Company acknowledges and agrees that the Engagement Personnel are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein. The Engagement Personnel are under no obligation to update data submitted to them or to review any other areas unless specifically requested to do so.

You understand that the services to be rendered by the CRA may include the preparation of projections and other forward-looking statements, and numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections. In addition, Engagement Personnel will be relying on information provided by the Company in the preparation of those projections and other forward-looking statements.

4. **Limitation of Duties.** Neither FAAN, nor the Engagement Personnel make any representations or guarantees that, *inter alia*, (i) an appropriate restructuring proposal or strategic alternative or refinancing proposal or sale can be formulated for the Company, (ii) any restructuring proposal or strategic alternative or sale or refinancing proposal will be more successful than all other possible restructuring proposals or strategic alternatives, (iii) a restructuring or sale is the best course of action for the Company, or (iv) if formulated, that any proposed restructuring plan or strategic alternative or refinancing proposal will be accepted by any of the Company's creditors, shareholders and other constituents. Further, the Engagement Personnel will not assume any responsibility for the Company's decision to pursue, or not pursue any business strategy, or to effect, or not to effect any transaction.
5. FAAN shall provide all services as an independent contractor and nothing in this agreement shall be construed to create an employee/employer relationship, partnership, joint venture, or other similar relationship with the Company.
6. **Compensation.**
 - (a) FAAN will charge and be paid its fees on an hourly basis, plus applicable taxes and out-of-pocket expenses reasonably incurred in connection with or arising out of FAAN's activities. A schedule of FAAN's rates is set out below, which are subject to annual increases which shall be communicated 30 days prior to taking effect.

Managing Director	[REDACTED]	hour
Senior Director/Director	[REDACTED]	hour
Senior Associate	[REDACTED]	hour
 - (b) Out-of-pocket expenses shall include, but not be limited to, fees, disbursements and other charges for travel and reasonable legal services provided to FAAN, and other necessary expenses.
 - (c) The Company shall promptly remit to FAAN, a retainer in the amount of \$15,000, plus HST, which shall be credited against any amounts due at the termination of this Agreement or returned upon the satisfaction of all obligations hereunder.
 - (d) FAAN shall bill for its services monthly, plus applicable taxes and out-of-pocket costs. Invoices rendered by FAAN are payable upon receipt.

7. Term and Termination.

- (a) This Agreement will become effective on the date of the issuance of a Court Order (defined below) appointing FAAN as CRA and may be terminated by the Company without cause by providing 60-day's written notice to FAAN, subject to the provisions in section 8 below.
- (b) FAAN normally does not withdraw from an engagement unless the Company misrepresents or fails to disclose material facts, fails to pay fees or expenses, or makes it unethical or unreasonably difficult for FAAN to continue performance of the engagement, or other just cause exists. If just cause exists in the determination of FAAN, FAAN may terminate this Agreement immediately.
- (c) On termination of the Agreement, any fees and expenses due to FAAN shall be remitted promptly (including fees and expenses that accrued prior to but are invoiced subsequent to such termination).
- (d) The provisions of this Agreement that give the parties rights or obligations beyond its termination shall survive and continue to bind the parties.

8. Insolvency Proceeding.

- (a) The Company intends to initiate a bankruptcy, insolvency or creditor enforcement proceeding (an "Insolvency Proceeding") under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or otherwise. The Company shall, as soon as possible but in any event within 10 calendar days of the commencement of an Insolvency Proceeding, apply for the approval of the Ontario Superior Court of Justice (Commercial List) (the "Court") of the retention of FAAN as the Court-appointed CRA (and/or any other role) of the Company, and/or any of the terms of such engagement (including, without limitation, the payment of FAAN's fees and expenses, the granting of an administrative charge in respect of such fees and expenses and the provision of indemnification to FAAN) and shall use reasonable commercial efforts to obtain such approval(s) by the Court (the "Court Order"), failing which FAAN may immediately suspend or discontinue its efforts on behalf of the Company.
- (b) The Company shall also promptly seek as a part of the Court Order, a security or charge in favour of FAAN, ranking in priority over the pre-

filing claim of any secured creditor of the Company, other than the charges in favour of 247888 Ontario Inc. and the stalking horse purchaser, on all of its property, in an amount reasonably appropriate, in respect of all of FAAN's fees and expenses payable under this Agreement. The Company shall supply FAAN with a draft of any such application and order for approval of FAAN's retention and/or any of the terms of such retention sufficiently in advance of the filing of such application and proposed order to enable FAAN (and its counsel) to review and comment thereon.

- (c) If this Agreement is terminated by either party, and if a Court Order has been issued appointing FAAN in any capacity in an Insolvency Proceeding involving the Company, then the Company shall promptly and without delay take all reasonable steps to apply to the Court to obtain the customary court order discharging and releasing the CRA.
- (d) The Company shall seek, as part of any proposal/plan confirmation or sale order obtained through an Insolvency Proceeding, a full and final release of FAAN from all potentially affected parties to the proposal/plan confirmation or sale order. The Company shall use reasonable commercial efforts to obtain such approval by the Court.

9. No Audit. The Company acknowledges and agree that Engagement Personnel are not being requested to perform an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the CICA, ICAO, OSC, AICPA, SEC or other state or national professional or regulatory body.

10. No Third-Party Beneficiary. The Company acknowledges that all advice (written or oral) provided by FAAN to the Company in connection with this engagement is intended solely for the benefit and use of the Company (limited to its management) in considering the matters to which this engagement relates. The Company may choose to reproduce, disseminate, quote or refer to such information as it wishes, in its sole and absolute discretion, provided that in no event may such information be attributed to FAAN without its express written consent to such attribution.

11. Exclusivity and Conflicts. FAAN is an independent firm that has several clients and engagements, some of which will be active during the rendering of services by the Engagement Personnel in connection with this matter. FAAN is not currently aware of any relationship that would create a conflict of interest with the Company or those parties-in-interest of which you have made us aware. It is possible that FAAN may have rendered or will render services to, or have

business associations with, other Company or people which had or have or may have relationships with the Company, including creditors of the Company. In the event you accept the terms of this engagement, FAAN will not represent, and has not represented, the interests of any such Company or people in connection with this matter.

12. Indemnification and Release.

- (a) Each of the Company (and any related entities), its directors and officers, and Liu shall indemnify and hold harmless FAAN and each of FAAN's employees, directors, officers, agents, representatives, consultants, legal advisors, financial advisors, fiduciaries, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations and shareholders (collectively, the "Indemnified Parties") against any and all claims or liabilities whatsoever and of every nature or kind arising in connection with FAAN's exercise of any duties or authority pursuant to this Agreement, or any Court Order, including any related professional fees or defence costs. This indemnity does not apply to claims which are determined by the Court to arise from gross negligence or willful misconduct.
- (b) Liu hereby releases FAAN and the Engagement Personnel from any present or future claims, liabilities or actions which he may now or hereafter have in respect of the performance by such persons of their duties under this Agreement (or any court order), including any claims for wages, vacation pay, negligence, breach of fiduciary duties or other matters which may arise as a result of Liu being a director, officer, employee or shareholder of the Company, either directly or indirectly through related corporations or individuals.
- (c) The Company (and any related entities), shall also indemnify the Indemnified Parties to the same extent as the most favorable indemnification it extends to its officers or directors, whether under the Company's bylaws, its certificate of incorporation, by contract or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided to the Indemnified Parties. The Indemnified Parties shall, to the extent that they act in an applicable capacity, be covered as officers under the Company's existing director and officer liability insurance policy (to the extent such policy exists as of the date of this Agreement) and, in such circumstances, as a condition of FAAN accepting this Agreement, a certificate of insurance evidencing such coverage shall be furnished to FAAN prior to the effective date of this Agreement. The Company shall

give thirty (30) days' prior written notice to FAAN of cancellation, non-renewal, or material change in coverage, scope, or amount of any director and officer liability policy.

13. **Miscellaneous.** This Agreement: (a) shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect to such Province's rules concerning conflicts of laws that might provide for any other choice of law; (b) incorporates the entire understanding of the parties with respect to the subject matter hereof; (c) may not be amended or modified except in writing executed by each of the parties hereto; (d) may be executed by facsimile and in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement; and (e) notwithstanding anything herein to the contrary, upon the completion of the restructuring process presently being undertaken in respect of the Company, FAAN may reference or list the Company's name and/or a general description of the services provided to the Company in FAAN's marketing materials.

If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.

Very truly yours,

FAAN ADVISORS GROUP INC.

Per: _____

Daniel Sobel, Managing Director

Accepted and agreed:

3070 ELLESMORE DEVELOPMENTS INC.

Per: _____
Tong (Thomas) Liu, CEO

(I have the authority to bind the Corporation)

Accepted and agreed:

TONG (THOMAS) LIU

Tong (Thomas) Liu

This is **Exhibit "B"** referred to in the Affidavit of **Tong Liu**
sworn September 10, 2019.



Commissioner for Taking Affidavits (or as may be)



Form 520
for use in the Province of Ontario

Listing Agreement – Commercial Seller Representation Agreement Authority to Offer for Sale



This is a Multiple Listing Service® Agreement



OR

This Listing is Exclusive



BETWEEN:

BROKERAGE: AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO)

55 COMMERCE VALLEY DR W# MARKHAM(the "Listing Brokerage") Tel. No. (905) 474-1155

SELLER: 3070 ELLESmere DEVELOPMENTS INC.(the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as 3070 Ellesmere Road, Toronto, ON

TORONTO, ON M1E 4C3(the "Property")

the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,

commencing at 12:01 a.m. on the 5 day of September 20.19

until 11:59 p.m. on the 15 day of February 20.20 (the "Listing Period"),

{ Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials. }



To offer the Property for sale at a price of:

One Dollars (\$CDN) 1.00

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.



The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"):

"Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

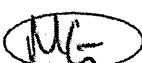
2. COMMISSION: In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission

of 2.5 % of the sale price of the Property or 1.5% of the sale price if the Buyer is CoStone Development Inc.

and Campus Suites Inc., in partnership,

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement OR such other terms and conditions as the Seller may accept.

INITIALS OF LISTING BROKERAGE:



INITIALS OF SELLER(S):



R The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.

© 2019, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of **NA** % of the sale price of the Property or

..... out of the commission the Seller pays the Listing Brokerage. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on

the Seller's behalf within **90** days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.

In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, awarded, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated) and to pay the balance of the deposit to the Seller.

All amounts set out as commission are to be paid plus applicable taxes on such commission.

3. REPRESENTATION: The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage acting as an agent for more than one seller without any claim by the Seller of conflict of interest. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage.

The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.

MULTIPLE REPRESENTATION: The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practical opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understand and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

INITIALS OF LISTING BROKERAGE:

INITIALS OF SELLER(S):

 The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.

© 2019, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

4. REFERRAL OF ENQUIRIES: The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller's accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

5. MARKETING: The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.

6. WARRANTY: The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

7. INDEMNIFICATION AND INSURANCE: The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying data form. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury as a result of the Property being affected by any contaminants or environmental problems. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.

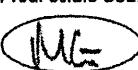
8. FAMILY LAW ACT: The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.

9. FINDERS FEES: The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

10. VERIFICATION OF INFORMATION: The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

11. USE AND DISTRIBUTION OF INFORMATION: The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may: during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and

INITIALS OF LISTING BROKERAGE:



INITIALS OF SELLER(S):



selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("Information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:

(Does)

(Does Not)

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

12. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

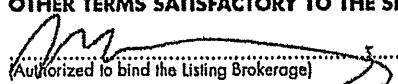
13. CONFLICT OR DISCREPANCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.

14. ELECTRONIC COMMUNICATION: This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

15. ELECTRONIC SIGNATURES: If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time.

16. SCHEDULE(S) and data form attached hereto form(s) part of this Agreement.

THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.

 **Sept 3/19** **MATT GUNNING**
 [Signature of Listing Brokerage] [Date] [Name of Person Signing]

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

3070 ELLESMORE DEVELOPMENTS INC.
 [Name of Seller] 
 [Signature of Seller/Authorized Signing Officer] [Seal] [Date] [Tel. No.]

[Signature of Seller/Authorized Signing Officer] [Seal] [Date] [Tel. No.]

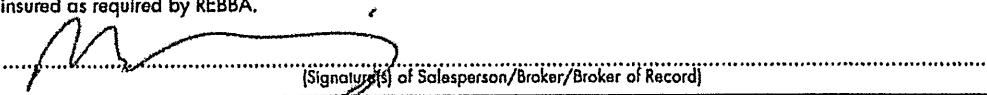
SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

[Spouse] [Seal] [Date] [Tel. No.]

DECLARATION OF INSURANCE

The Salesperson/Broker/Broker of Record **MATT GUNNING / NICK YANOVSKI**
 [Name of Salesperson/Broker/Broker of Record]

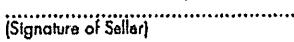
hereby declares that he/she is insured as required by REBBA.


 [Signature(s) of Salesperson/Broker/Broker of Record]

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the 5th day of September, 20 19.

 **Sept 5th, 2019**
 [Signature of Seller] [Date]


 [Signature of Seller]

 The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association ("CREA") and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.
 © 2019, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.


Form 523

for use in the Province of Ontario

Schedule A
Listing Agreement – Commercial
Authority to Offer for Sale


This Schedule is attached to and forms part of the Listing Agreement - Commercial Authority to Offer for Sale (Agreement) between:

BROKERAGE: AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO)....., and

SELLER: 3070 ELLESmere DEVELOPMENTS INC.

for the property known as 3070 Ellesmere Road, Toronto, ON..... TORONTO, ON M1E 4C3.....

....., dated the 5..... day of September....., 2019.....

The Listing Brokerage acknowledges and understands that the subject property will go through a sale and investment solicitation process ("SISP") that starts with a stalking horse offer and ends with a public bidding procedure.

The Vendor agrees to pay a co-operating brokerage commission up to 2.5% of the sale price in addition to the Listing Commission outlined in Clause 2, which shall be paid through the Listing Brokerage to assist negotiating the best net price of the subject property.

In the event that the Stalking Horse bid which has been submitted and registered is the successful bidder then the Commission paid to the Listing Broker shall be reduced to 1.5%. The Stalking Horse bidder is: CoStone Development Inc. and Campus Suites Inc., in partnership, in trust for an entity to be formed.

The Listing Brokerage shall work diligently with the Vendor, the Proposal Trustee, the Chief Restructuring Officer and the Legal Counsel for the marketing and sales procedure of the subject property.

This form must be initialed by all parties to the Agreement.

INITIALS OF BROKERAGE:

INITIALS OF SELLER(S):

The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.

© 2019, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 3070 ELLESmere DEVELOPMENTS INC.

District of: Ontario
Division No.: 09-Toronto
Court No.: 31-2547832
Estate No.: 31-2547832

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY AFFIDAVT

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Larry Ellis LSO #: 49313K
Tel: 416.869.5406
Fax: 416.262.3543
lellis@casselsbrock.com

Erin Craddock LSO #: 62828J
Tel: 416.860.6480
Fax: 416.644.9324
ecraddock@casselsbrock.com

Lawyers for 3070 Ellesmere Developments Inc.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 3070 ELLESmere DEVELOPMENTS INC.

District of: Ontario
Division No.: 09-Toronto
Court No.: 31-2547836
Estate No.: 31-2547835

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

SUPPLEMENTARY MOTION RECORD

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Larry Ellis LSO #: 49313K
Tel: 416.869.5406
Fax: 416.262.3543
lellis@casselsbrock.com

Erin Craddock LSO #: 62828J
Tel: 416.860.6480
Fax: 416.644.9324
ecraddock@casselsbrock.com

Lawyers for 3070 Ellesmere Developments Inc.