

Court File No.: CV-22-00677236-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRINITY RAVINE COMMUNITY INC.

**AFFIDAVIT OF JEREMY ANDERSON
(sworn August 23, 2022)**

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Community Inc.

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**AFFIDAVIT OF JEREMY ANDERSON
(sworn August 23, 2022)**

I, JEREMY ANDERSON, of the City of Toronto in the Province of Ontario, **MAKE
OATH AND SAY AS FOLLOWS:**

1. I am the Secretary of the Applicant, Trinity Ravine Community Inc. ("**Trinity Ravine**" or the "**Applicant**"), and as such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.
2. This Affidavit is supplementary to and should be read in conjunction with my Affidavit sworn August 19, 2022 (the "**Original Affidavit**"). Capitalized terms are as defined in the Original Affidavit unless otherwise defined herein. A copy of the Original Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

I. SELECTION OF OFFER & RELIEF SOUGHT

A. Selection of Offer

- II.** As set out in my Original Affidavit, as of the date thereof the SISP had not produced an offer that was accepted by the Applicant's Board.
- III.** Throughout August 20 and 21, 2022, the Applicant's Board met on more than one occasion to consider and discuss at length the Alternative Offers and the RCM Term Sheet.
- IV.** The Applicant and the Purchaser engaged in negotiations up until late evening on August 23, 2022, at which time the Applicant accepted one of the Alternative Offers from a prospective purchaser (the "**Purchaser**"). Specifically, the Applicant elected to proceed with an offer (the "**Accepted Offer**") which provides creditors with the greatest degree of certainty with respect to recovery.
- V.** A copy of the Accepted Offer is attached hereto as **Confidential Exhibit "A"**.

B. Relief Sought & Next Steps

- VI.** The Applicant seeks an Order, *inter alia*, extending the Stay Period up to and including September 16, 2022, to allow the Applicant and the Purchaser to bring a motion for an approval and vesting order as well as a further extension of the Stay Period, on full notice to the service list and to Purchasers of Life Lease Agreements. The Applicant also seeks an Order sealing Confidential Exhibit "A" until the transaction contemplated therein is completed or until further Order of this Court.
- VII.** The Applicant is not seeking the approval of the Accepted Offer on this motion. Prior to seeking approval of the Accepted Offer and the transaction contemplated therein, the

Applicant intends to file a further Affidavit to provide the Court and the Applicant's stakeholders with a comprehensive overview of the offers received by the Applicant, and the process followed to arrive at the Accepted Offer.

II. CONCLUSION

9. The Applicant has acted and continues to act in good faith and with due diligence in these proceedings. The extension to the Stay Period is in the best interest of all creditors and other stakeholders in this proceeding, and it would be fair, reasonable and appropriate for the Court to grant the relief sought.

10. I swear this affidavit in support of a Motion for an Order extending Stay Period to September 16, 2022, and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 23rd day of August, 2022.

DocuSigned by:
Monica Faheim
A927328446B742A...
Commissioner for Taking Affidavits
MONICA FAHEIM

DocuSigned by:
Jeremy Anderson
78645C98E045438...
JEREMY ANDERSON

This is Exhibit "A" referred to in the Supplementary Affidavit of JEREMY ANDERSON sworn by JEREMY ANDERSON of the City of Toronto, in the Province of Ontario, before me at the City of Mississauga, in the Province of Ontario, on August 23, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328446B742A

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

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I, JEREMY ANDERSON, of the City of Toronto in the Province of Ontario, **MAKE
OATH AND SAY AS FOLLOWS:**

1. I am the Secretary of the Applicant, Trinity Ravine Community Inc. ("**Trinity Ravine**" or the "**Applicant**"), and as such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.
2. Capitalized terms are as defined in my Affidavit sworn February 22, 2022 (the "**First Affidavit**") or my Affidavit sworn February 28, 2022 (the "**Second Affidavit**") unless otherwise defined herein. Copies of the First Affidavit and Second Affidavit (each without exhibits) are attached hereto as **Exhibits "A"** and **"B"**, respectively.

I. BACKGROUND

A. The Applicant & Project

3. The Applicant, Trinity Ravine, is the developer of a real estate development project known as Trinity Ravine Community (the “**Project**”) located at the real property municipally known as 1256 Markham Road, Scarborough, Ontario (the “**Development Lands**”).
4. Trinity Ravine is unlike most conventional real estate developers, in that it was not developing the Project as a “for-profit” condominium. Rather, the Project was intended to create a community and various amenities for senior citizen residents.

B. Life Lease Structure & Deposits

5. The Project utilized a life lease structure, pursuant to which purchasers (the “**Purchasers**”) entered life lease agreements (the “**Life Lease Agreements**”) for the right to occupy units (“**Suites**”) in the Project upon completion. The Life Lease Agreements required that Purchasers make a series of payments to the Applicant prior to completion of the Project and occupancy of their Suites (the “**Deposits**”).
6. When originally conceived, there was considerable enthusiasm for the Project. A total of 468 Purchasers entered Life Lease Agreements and paid Deposits to the Applicant in the aggregate amount of approximately \$27.6 million.

C. Project Not Completed by Completion Date

7. The Project initially contemplated a completion date (the “**Completion Date**”) of March 31, 2019. However, in accordance with the Life Lease Agreements, the Applicant extended the Completion Date to March 31, 2022.

8. Ultimately, the Applicant was unable to complete the Project by the extended Completion Date. Although substantially all required permits were in place, construction had not yet commenced. Due to factors which include skyrocketing construction costs and the devastating impact of the COVID-19 pandemic, the Project's financial model was no longer viable.
9. The pricing at which life lease interests in Suites were sold to Purchasers was too low for the new market conditions. The Applicant had intended to secure conventional construction financing in order to complete the Project once applicable permits were in place. When the development plan for the Project was conceived, the expected aggregate proceeds from sales of the Suites would have been sufficient to repay the projected construction financing required. However, due primarily to the massive unforeseen cost increases, sales proceeds from the Suites was insufficient to cover the cost of completion.

D. Terminations & Deposit Refunds

10. Due to the delays and uncertainties, a number of Purchasers purported to terminate their Life Lease Agreements and demanded return of their Deposits.
11. While a substantial amount of the funds received in respect of the Deposits was spent on soft development costs such as commissions, broker fees, site plan approvals, architect fees and reporting, the Applicant initially made efforts to accommodate these Life Lease Agreement termination requests. Over the course of late 2019 to 2021, the Applicant accepted the termination requests of 188 Purchasers, to whom Deposits (inclusive of interest) were returned in the aggregate amount of \$12,229,521.49.

12. Unfortunately, this left the Applicant with minimal cash reserves and negative monthly cash flow, and it was ultimately unable to fund construction of the Project or refund further Deposits. As of the commencement of the CCAA Proceedings (as defined below), a total of 280 Purchasers remain in the Project, with Deposits paid to the Applicant in the aggregate principal amount of \$16,119,649.96.

E. The CCAA Proceedings

13. On February 23, 2022, the Applicant sought and obtained creditor protection and other ancillary relief pursuant to an order granted by this Court (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”). A copy of the Initial Order (together with the Endorsement of Justice Penny dated February 23, 2022) is attached hereto as **Exhibit “C”**.
14. Pursuant to the Initial Order, *inter alia*, the Court: (a) declared that the Applicant is a company to which the CCAA applies; (b) authorized the Applicant to remain in possession and control of its assets, undertaking and properties (the “**Property**”); (c) ordered a stay of all proceedings and remedies in respect of the Applicant or affecting its business or property (the “**Stay**”) for an initial period of ten (10) days up to and including March 5, 2022 (the “**Stay Period**”); (e) appointed Deloitte Restructuring Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the “**Monitor**”); and (f) granted an administration charge (the “**Administration Charge**”) on the Property as security for the payment of the professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to the Applicant, in connection with the CCAA Proceedings.

15. On March 4, 2022, the Court issued Orders, among other things: (i) amending and restating the Initial Order (the “**Amended & Restated Order**”), (ii) extending the Stay Period to July 22, 2022, (iii) increasing the amount of the Administration Charge, and (iv) approving a sale and investment solicitation process in respect of the Property and the Applicant’s business (the “**SISP Order**”). Copies of the Amended & Restated Order, the SISP Order and the Endorsement of Justice Conway dated March 4, 2022 are attached hereto as **Exhibits “D”, “E” and “F”**, respectively.

16. On July 18, 2022, the Court issued an Order (the “**July Order**”), among other things, extending the Stay Period to August 31, 2022. Copies of the July Order and the Endorsement of Justice Kimmel dated July 18, 2022 are attached hereto as **Exhibits “G” and “H”**, respectively.

II. SISP RESULTS & STATUS

A. Implementation of the SISP

17. Following issuance of the SISP Order, the Monitor, with the assistance of the Applicant, implemented and conducted the SISP as contemplated thereunder.

18. Unfortunately, the SISP has not generated a binding offer acceptable to the Applicant. In particular, the offers received through the SISP were substantially less than the appraised value of the Property and would have resulted in little, if any, definite recoveries for purchasers and other unsecured creditors.

19. While I recognize the limitations of appraisals in predicting actual market value, based on information from brokers, prospective purchasers and others involved in the SISP it is my

view that our efforts to sell the Property were substantially hampered by a relatively unpredictable and detrimental confluence of events that occurred contemporaneously with the implementation and conduct of the SISP.

B. Adverse Impact of Global Events on SISP

20. The SISP Order was issued March 4, 2022 and implemented shortly thereafter. Unfortunately, the SISP was commenced during a confluence of events which had a significant adverse effect on the market for the Property by perpetuating the risk and uncertainties in the market:

- (a) War in Ukraine. On February 24, 2022, Russian president Vladimir Putin announced a “special military operation” in Ukraine, launching Russia’s invasion;
- (b) Inflation Concerns. The extent of rising inflation began to emerge, with consumer price increases in March 2022 reaching 6.7% in Canada and 8.5% in the United States as the combination of rising demand and troubled supply chains, among other things, caused costs and the price levels to rise;
- (c) Cooling of Real Estate Market. In March 2022 the Canadian real estate market experienced its first decline in almost two years (*i.e.*, since the earliest days of the COVID-19 pandemic) in both the number of homes sold and the average selling price, one symptom of the sudden overall chilling of the market;
- (d) Rising Interest Rates. On April 13, 2022, the Bank of Canada raised its overnight interest rate by 50 basis points, and advised that it expected inflation averaging

6% in the first half of the year. The Bank of Canada also announced it would begin quantitative tightening, effective April 25, 2022; and

- (e) COVID 19 Pandemic. The COVID pandemic continued, exacerbated by the emergence of the Omicron variant.

C. Offers Received Through the SISP

- 21. As noted above, the SISP has not generated a binding offer that the Applicant has accepted thus far. The offers received through the SISP would have produced little, if any, definite recoveries for purchasers and other unsecured creditors.
- 22. I have not included any significant details regarding the offers generated through the SISP as I am concerned that disclosure of details could adversely impact the market for the Property and any future sale. However, I understand that the Monitor will provide details of such offers through confidential appendices to its Third Report, to be filed.

D. Alternative Offers Received August 18, 2022

- 23. On the afternoon of August 18, 2022, the Applicant received three different amended and improved offers (the “**Alternative Offers**”) from a SISP participant. Two of the Alternative Offers presented different mixes of guaranteed amounts on closing and speculative potential future amounts, and one of which provided for an “all cash” offer.
- 24. As of the date of this Affidavit, the Applicant’s Board has not yet had the opportunity to consider the Alternative Offers. The Applicant’s Board is meeting on an urgent basis to consider the Alternative Offers and I expect it will have made a decision by August 22,

2022 or shortly thereafter, and in any event prior to the return of this motion, following which the Applicant intends to serve supplementary materials.

25. In the event the Board decides to accept one of the Alternative Offers, the need for the RCM Loan would be eliminated. However, given the immediate uncertainties and time pressures, unless and until the Board accepts one of the Alternative Offers, the Applicant has determined that it must proceed with service and filing of its motion record including this Affidavit.

III. NEED FOR EXTENSION & REFINANCING

A. Background to the Motion

26. The SISP has not produced an offer that has been accepted by the Applicant's Board. The Applicant continues in discussions with several interested parties in the hopes of reaching an acceptable agreement. However, as the Stay Period expires August 31, 2022, a further extension will be required if such efforts are to continue.
27. By letter dated August 17, 2022 (the "**Default Notice**"), Nahid Corp. ("**Nahid**"), the DIP Lender (as defined under the Amended & Restated Order) and a pre-filing secured creditor of the Applicant, as well as an unsuccessful bidder in the SISP, delivered written notice to the Applicant and the Monitor that it considered that a default had occurred under the DIP Term Sheet dated March 1, 2022 (the "**DIP Term Sheet**"), entitling it to enforce its rights and remedies thereunder after a seven day period. A copy of the Default Notice is attached hereto as **Exhibit "I"**.

28. I do not agree with much of the contents of the Default Notice including, in particular, its characterization of the current circumstances or conclusion that an “Event of Default” has occurred. However, as set out below, I do not believe that it is necessary to engage on these issues at this time as the Applicant is in a position to pay all indebtedness owing to Nahid by no later than September 16, 2022.

B. Proposed Re-Financing

29. In light of its decision to continue seeking an acceptable transaction, as well as its receipt of the Default Notice, the Applicant requires re-financing sufficient to pay in full all amounts owing to the secured creditors, Limestone Capital Inc. (“**Limestone**”) and Nahid (including amounts owing under the DIP Term Sheet).

30. In this regard, the Applicant has received a binding term sheet (the “**RCM Term Sheet**”) from RCM Capital Management Ltd. (“**RCM**”) for new financing sufficient to pay all amounts outstanding to Limestone and Nahid in very short order.

31. The RCM Term Sheet provides for, among other things, sufficient financing to achieve its immediate objectives, including repaying all secured creditors and providing sufficient “breathing room” for the Applicant to continue its efforts to secure an acceptable transaction and a closing date of no later than September 16, 2022. Contemporaneously with closing of the financing under the RCM Term Sheet (“**RCM Loan**”), Limestone and Nahid will be paid in full. Pursuant to the RCM Term Sheet, RCM will replace Nahid as DIP Lender.

32. The only significant outstanding conditions precedent to the RCM Loan are:

- (a) Negotiation and execution of definitive documentation;
- (b) Limited due diligence; and
- (c) Granting of a Court Order: (i) approving the RCM Loan, (ii) granting a super-priority DIP charge in favour of RCM that ranks in priority to all claims and encumbrances against the Applicant's property, and (iii) confirming termination of the Life Lease Agreements and that the purchasers under the Life Lease Agreements do not have a beneficial interest in the Development Lands, among other things.

33. The Board intends to meet on an urgent basis to consider the RCM Term Sheet and the Alternative Offers, and will advise the Court and the stakeholders of its decision shortly thereafter.

C. Description of Relief Sought & Next Steps

34. Out of an abundance of caution and in order to preserve its ability to move forward with the RCM Loan if the Board considers it appropriate, the Applicant brings this motion for an Order substantially in the form of the draft order attached at Schedule "A" to the Notice of Motion, *inter alia*:

- (a) Approving the RCM Term Sheet; and
- (b) Extending the Stay Period up to and including September 16, 2022.

35. In the event the Court grants the requested relief described above, the Applicant intends to return to Court prior to the expiry of the Stay Period to seek an Order, among other things:

- (a) Approving the RCM Loan and definitive documents and the transactions contemplated therein, and granting a prior DIP charge in favour of RCM;
- (b) Terminating the SISP;
- (c) Terminating the Life Lease Agreements; and
- (d) Extending the Stay Period to March 31, 2023.

36. I believe that the relief requested is in the best interests of the Applicant and its creditors and other stakeholders, and that it would be fair, reasonable and appropriate for the Court to grant the relief sought.

D. Extension of Stay of Proceedings

37. The current Stay Period under the Initial Order expires on August 31, 2022. The Applicant seeks to an extension of the Stay to September 16, 2022, to allow it to complete definitive documentation with respect to the RCM Loan and return to Court to seek the relief described at paragraph 35 above, should the Board approve that course of action.
38. As noted above, several credible parties have come forward to propose deal structures that, while potentially far superior to those received from prospective purchasers through the SISP, would require significantly more time to explore and negotiate than was contemplated by the SISP timelines. The Applicant's intended course of action will enable it to pursue these more complex but potentially more lucrative transactions without the compressed timelines associated with a typical sale and investment solicitation process.
39. In the event no agreement on a transaction is reached, I expect that the Applicant will return to Court for further direction including with respect to potential implementation of a second

sale process. I expect that by the first quarter of 2023 the market will have found some degree of equilibrium and many of the current uncertainties will have been reduced or eliminated, creating better conditions within which to market and sell the Property.

IV. CONCLUSION

40. Given the minimal and/or highly speculative recoveries that may be available to purchasers and other unsecured creditors under the various current offers thus far reviewed and considered by the Board, I believe that the Applicant’s intended course of action represents the best course of action.

41. The Applicant has acted and continues to act in good faith and with due diligence in these proceedings, and the extension to the Stay Period is in the best interest of all creditors and other stakeholders in this proceeding. In short, existing secured creditors will be paid in full, and the Applicant will be able to continue its pursuit of a transaction that will generate a better result for unsecured creditors.

42. I swear this affidavit in support of a Motion for an Order extending Stay Period to September 16, 2022 and approving the RCM Term Sheet, and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 19th day of August, 2022.

DocuSigned by:
Monica Fakeim
A027328446B742A...

Commissioner for Taking Affidavits

DocuSigned by:

Jeremy Anderson

70645C98E045238

JEREMY ANDERSON

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