

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

BETWEEN:

**MARSHALLZEHR GROUP INC. and THE BANK OF NOVA SCOTIA TRUST
COMPANY**

Applicants

- and -

2131059 ONTARIO LIMITED

Respondent

FIRST REPORT OF THE RECEIVER

July 17, 2015

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I. INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 15, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited (“**CBTL**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2131059 Ontario Limited (“**Mapleview**” and/or the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and including the real property described in Schedule “B” of the Appointment Order and municipally known as 700 and 725 Mapleview Drive East, Barrie, Ontario (the “**Property**”). A copy of the Appointment Order is attached as Appendix “A”. The circumstances that led to the appointment of the Receiver is set out in the affidavit of Gregory Zehr sworn April 29, 2015 and filed in support of the receivership application. A copy of the affidavit, without exhibits, is attached as Appendix “B”.
2. The Appointment Order authorized the Receiver to, among other things:
 - a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and
 - b) manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor.
3. In addition, paragraph 21 of the Appointment Order empowers the Receiver to borrow an amount that is not to exceed \$500,000 (or such greater amount as the Court may by further Order authorize), which advance(s) will be repaid in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the Bankruptcy and Insolvency Act.

4. The Court Order referred to in this report together with the related court documents has been posted on the Receiver's website, which can be found at <http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/2131059-ontario-limited-mapleview>.

Purpose of First Report

5. The purpose of this first report of the Receiver (the "**First Report**") is to:
- a) provide to the Court details of the Receiver's activities since its appointment on May 15, 2015;
 - b) request that the Court grant an Order:
 - (i) approving the Receiver's activities as set out in the First Report; and
 - (ii) increasing the amount that the Receiver may borrow from \$500,000 to \$3,000,000 and authorizing and empowering the Trustee to borrow such funds from MarshallZehr Group Inc. ("**MarshallZehr**") on the terms and subject to the conditions set out in the commitment letter dated July 16, 2015 between the Receiver and MarshallZehr, a copy of which is attached as Appendix "C" ("**Commitment Letter**").

Terms of Reference

6. In preparing this First Report and making the comments herein, the Receiver has relied upon unaudited financial information, the books and records of 2131059

Ontario Limited, discussions with management and employees of 2131059 Ontario Limited and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by 2131059 Ontario Limited, or other parties, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

II. BACKGROUND

7. 2131059 Ontario Limited, operating as Baywood Homes, is the registered owner of the Property. The Debtor acquired the Property with the intention to construct a medium and high density residential development.
8. MarshallZehr granted loans totaling approximately \$21,000,000 to the Debtor to finance the development of the Property. As of April 1, 2015, the total amount due to MarshallZehr was \$27,211,581.57. As security for its loans, MarshallZehr was granted, among other things, first-ranking, third-ranking and fourth-ranking mortgages, which are registered against the Property. Each of the mortgages matured in early 2014. The loans were not paid on their maturity and the mortgages are in default.
9. The development requires site plan approval from the City of Barrie (the “**City**”) before it can proceed. Although it was in the position to seek site plan approval

in the summer of 2013, the Debtor did not advance its application process and failed or refused to authorize MarshallZehr to do so on the Debtor's behalf. Accordingly, the receivership application was made.

10. The City has established specific deadlines in respect of compliance with development conditions. If those conditions are not satisfied, the City may revoke the agreed-upon densities approved for the Property.
11. The second ranking mortgagee also commenced power of sale proceedings, and issued a notice of sale with a redemption date of April 28, 2015.

III. RECEIVER'S ACTIVITIES TO DATE

Possession and Control

12. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order since its appointment, with the primary focus being on taking possession of the books, records and documentation of the Debtor and preparation of a budget for the registration of the plan of subdivision for the Property:
 - Attended at the Baywood Homes offices to meet with representatives of the Debtor to gather financial and other documentation pertaining to the Property;
 - Issued the Notice and Statement of Receiver (pursuant to Sections 245(1) and 246(1) of the Bankruptcy and Insolvency Act);
 - Attended in Barrie at the Property to view the site; and
 - Attended a meeting in Barrie with representatives of Jones Consulting Group Ltd. Planners & Engineers ("**Jones**"), a major engineering firm in Barrie which had previous involvement with the project, to obtain

background information relating to the outstanding matters required to be addressed in order to obtain registration of the Plan of Subdivision for the Property.

Project Status

13. In November 2013, an approval was given by the Ontario Municipal Board (“**OMB**”) in principle for an Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision, including conditions of draft plan approval for the subject lands.
14. There were two parts to the OMB hearing. The first part of the hearing dealt with the cost sharing items between the Debtor and two other groups. The second part dealt with the Official Plan Amendment, Zoning By-law and Draft Plan of Subdivision.
15. The Receiver is advised that the cost sharing amount had, prior to the appointment of the Receiver, been agreed to between the parties. Once the cost sharing amount is paid, and evidence of same is provided to the OMB, the OMB will issue its final Order (“**OMB Order**”).
16. Upon the issuance of the OMB Order, the Official Plan Amendment, Zoning By-law and Plan of Subdivision will be approved.
17. The Draft Plan Conditions set out in the Official Plan Amendment, Zoning By-law and Plan of Subdivision include a total of 46 conditions that must be addressed prior to registration of the Subdivision.
18. Once these conditions have been met and the Plan of Subdivision has been registered, then the development blocks are more saleable and can be sold en bloc or individually thereby maximizing realizations from the Property.

Cash Requirements

19. In conjunction with Jones, the Receiver requisitioned fee quotes from the various service providers to establish a budget to satisfy the 46 Draft Plan Conditions that must be addressed prior to registration of the Plan of Subdivision.
20. In addition to the foregoing, the Receiver is required to pay (i) the amount set out in the cost sharing agreement referred to above, (ii) property tax arrears, and (iii) property taxes to July 2016 when due, the amount of which has been estimated by the Receiver.
21. Based on the information gathered, the Receiver estimates the immediate cash requirements to achieve the aforementioned objective within the next year are as follows:

• Cost- Sharing Agreement (including interest)	\$975,000
• Engineering costs to obtain Registration	600,000
• Property taxes	750,000
• Professional fees	500,000
• Facility Fee	100,000
• Miscellaneous	<u>75,000</u>
 TOTAL	 <u>\$3,000,000</u>

IV. RECEIVER'S BORROWINGS

22. In order for the Receiver to proceed to have the Plan of Subdivision registered, the Receiver requires additional financing. As a result, the Receiver is requesting that the Court (i) increase the borrowings available to the Receiver under the Appointment Order from \$500,000 to \$3,000,000, and (ii) approve the Receiver borrowing such funds from MarshallZehr on the terms set out in the Commitment Letter.
23. As set out in the Commitment Letter:
 - a) The purpose of the facility is to fund the costs of this proceeding including the cost of obtaining site plan approval;
 - b) The term of the facility is the earliest of demand and 12 months from the date of the initial advance, which term may be extended for an additional 12 months;
 - c) The annual rate of interest is 12% calculated on the daily outstanding balance of the facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments; and
 - d) A facility fee of \$100,000 is payable to MarshallZehr (the "**Facility Fee**") at the time of the first advance of the loan and shall be deducted from the advance of the loan.

V. RECEIVER'S REQUEST TO THE COURT

24. Based on the foregoing, the Receiver respectfully requests that the Court issue an Order:
 - a) Approving the First Report and the Receiver's conduct and activities for the period May 15, 2015 to July 16, 2015 as described herein;

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- b) Increasing the amount that the Receiver may borrow from \$500,000 to \$3,000,000; and
 - c) Approving the Commitment Letter and authorizing the Receiver to execute the Commitment Letter and to pay the Facility Fee set out therein.

All of which is respectfully submitted to this Court as of this 17th day of July, 2015.

COLLINS BARROW TORONTO LIMITED

In its capacity as Court Appointed Receiver
of 2131059 Ontario Limited and
not in its personal capacity



for
Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP
President

APPENDIX A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE *REGIONAL SENIOR*)
JUSTICE *MORAWETZ*)

FRIDAY, THE 15TH
DAY OF MAY, 2015



**MARSHALL ZEHR GROUP INC. and THE BANK OF NOVA SCOTIA TRUST
COMPANY**

Applicants

- and -

2131059 ONTARIO LIMITED

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicants for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Collins Barrow Toronto Limited as receiver (the "Receiver") without security, of all of the assets, undertakings and properties of 2131059 Ontario Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gregory Zehr sworn April 29, 2015 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, and being advised that the Respondent does not oppose the Application, and that Collins Barrow Toronto Limited has consented to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Collins Barrow Toronto Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, all proceeds thereof and including the real property described in Schedule 'B' (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and

negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Court in respect of any transaction, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to take all steps necessary to obtain site plan approval from the City of Barrie in respect of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all

such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise,

in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<█>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. 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.


30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

 MAY 15 2015

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Schedule 'B'

PIN 58091-1689 LT

PT S1/2 LT 16 CON 12 INNISFIL PT 1 51R22928 EXCEPT PT 4 51R32586; S/T EASE OVER
PTS 1, 2 & 3 51R32586 AS IN SC212816, S/T EASE IN GROSS OVER PT 8 ON PL
51R34165 AS IN SC510541; BARRIE

PIN 58091-0288 LT

PCL 16-2 SEC 51INN12; PT S 1/2 OF LT 16 CON 12 INNISFIL PT 1 51R22937, S/T EASE IN
GROSS OVER PT 6 PL 51R34165 AS IN SC510541; BARRIE

**MARSHALLZEHR GROUP INC. AND THE BANK
OF NOVA SCOTIA TRUST COMPANY** and

Applicants

2131059 ONTARIO LIMITED

Respondent

Court File No. CV-15-10951-00CL

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

Proceedings commenced at Toronto

ORDER
(appointing receiver)

CHAITONS LLP
Barristers & Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC # 21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Doug Bourassa (LSUC # 50315C)
Tel: (416) 218-1128
Fax: (416) 218-1845
E-mail: doug@chaitons.com
Lawyers for the Applicants

APPENDIX B

Court File No.

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

**MARSHALLZEHR GROUP INC. and THE BANK OF NOVA SCOTIA TRUST
COMPANY**

Applicants

- and -

2131059 ONTARIO LIMITED

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

AFFIDAVIT OF GREGORY ZEHR
(sworn April 29, 2015)

I, Gregory Zehr, of the City of Waterloo, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Applicant, MarshallZehr Group Inc. ("MZG"). As such, I have knowledge of the facts and matters hereinafter deposed to. Where information contained in this affidavit is based on information and advice I have received from other sources, I have stated the source of that information and advice, and in all such cases I believe such information and advice to be true.

OVERVIEW

2. 2131059 Ontario Limited, operating as Baywood Homes (the "**Debtor**") is the registered owner of a property municipally known as 700 and 725 Mapleview Drive East, Barrie, Ontario (the

“Property”). The Debtor acquired the Property with the intention to construct a medium and high density residential development.

3. The Applicants granted loans totalling approximately \$21 million to the Debtor for the purpose of financing the development of the Property. As of April 1, 2015, the total amount due to the Applicants was \$27,400,038.13. As security for their loans the Applicants hold, among other things, first-ranking, third-ranking and fourth-ranking mortgages, registered against the Property. Each of the mortgages matured in early 2014. The loans were not paid on maturity of the mortgages, and the mortgages are in default.

4. The Debtor is in breach of its obligations to the Applicants under the loans for, among other things, non-payment. On February 27, 2014, the Applicants issued demand letters and Notices of Intention to Enforce Security pursuant to Section 244(1) (the “BIA Notices”) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”).

5. On April 8, 2014, the Applicants issued a Notice of Sale under their first ranking mortgage against the Property. No payments have been received by the Applicants since the issuance of the demands.

6. The development requires site plan approval from the City of Barrie before it can proceed. Although it was in the position to seek site plan approval in the summer of 2013, the Debtor has not advanced its application process and has failed or refused to authorize the Applicants to do so on the Debtor’s behalf. Until site plan approval is obtained, building permits cannot be applied for and construction of the development cannot be commenced.

7. The Applicants listed the Property for sale under power of sale with Park Place Realty Inc. in July 2014. In the course of marketing the Property under power of sale, potential purchasers have conditioned their interest on the Property being site plan approved. If site plan approval is obtained, the Property is expected to substantially increase in value, and may be sufficient to satisfy all the mortgage debts relating to the Property. By contrast, based on appraisals obtained by MZG, an 'as is' sale of the Property will not likely generate sufficient proceeds to repay the first mortgage.

8. The development approval process included a settlement agreement between the Debtor and the City of Barrie at the Ontario Municipal Board (the "OMB"). Pursuant to this settlement, there are certain development deadlines with the City of Barrie relating to site plan approval that must be met if the development is to proceed. Unless the deadlines are met, the previously agreed-upon densities for the project are at risk of being revoked by the City of Barrie.

9. The second ranking mortgagee has issued a notice of sale dated March 19, 2015, with a redemption period expiring on April 28, 2015.

10. The Applicants seek the appointment of Collins Barrow Toronto Limited ("Collins Barrow") as receiver under Section 243(1) of the *Bankruptcy and Insolvency Act* ("BIA") and Section 101 of the *Courts of Justice Act* over the Debtor's property, assets and undertakings for the purpose of obtaining the requisite site plan approvals and selling the Property for the benefit of the Applicants and other stakeholders.

BACKGROUND

11. The Applicant MZG is a real estate brokerage and administration firm formed in 2008 with head offices in Waterloo, Ontario. MZG is in the business of structuring and administering secured mortgages primarily for residential developments. Individual mortgage transactions arranged by

MZG typically range from \$1MM to \$80MM and are managed separately for their lenders under mortgage administration agreements.

12. The Debtor is an Ontario corporation, incorporated on March 21, 2007, with a registered office address of 114 Sheppard Avenue West, Suite 12, Toronto, Ontario. Attached hereto as **Exhibit "A"** is a copy of the Corporate Profile Report for 213 obtained from the Ministry of Government Services on March 6, 2015.

13. The Debtor acquired the Property in May 2007. The Property is comprised of approximately 100 acres of raw land located near the GO train station in Barrie, Ontario. The Property is intended for a medium and high-density residential development. The original development plans included approximately 1,823 to 1,876 units of mixed types, with no structure higher than 10 stories. Following a refusal by the City of Barrie (the "**City**") to approve the project and a subsequent settlement between the City and the Debtor, reflected in the reasons of the Ontario Municipal Board (the "**OMB**") dated June 21, 2013 the number of authorized units was reduced to 1,240. A copy of the OMB's decision dated June 21, 2013 is attached hereto as **Exhibit "B"**.

14. The next stage in the project development requires the Debtor to obtain site plan approval from the City.

THE APPLICANTS LOANS

15. Pursuant to a commitment letter dated December 7, 2009, MarshallZehr Group Inc., in its capacity as the trustee for a number of lenders (the "**MZG Trustee**"), made a term loan available to the Debtor in the principal amount of \$13 million for the purpose of refinancing the Property for future development (the "**First Loan**"). A copy of the 2009 commitment letter is attached hereto as **Exhibit "C"**.

16. A portion of the interest accruing on the First Loan was deferred, and described as an 'equity bonus' in the 2009 commitment letter. Pursuant to the terms of the First Loan, upon maturity or prepayment of the First Loan in whole, deferred interest equal to the following became due: (i) \$3,900,000, if the First Loan was retired on or before the 2nd anniversary of the advance; or (ii) \$4,712,500 (the "**Deferred Interest**").

17. As security for the First Loan, the MZG Trustee obtained, among other things: (i) a first ranking mortgage on the Property in the amount of \$17,712,500 (the "**First Mortgage**"); and (ii) a general security agreement over the Debtor's personal property (the "**2009 GSA**"). Copies of the First Mortgage and the GSA are attached hereto as Exhibits "**D**" and "**E**", respectively.

18. It was agreed between the parties that the Deferred Interest will subordinate and be postponed to the second registered charge on the Property in favour of Sussman Mortgage Funding Inc. (the "**Sussman Charge**").

19. In June 2012, pursuant to the terms of a commitment letter dated June 28, 2012, as amended by an addendum dated October 12, 2012 and a second addendum dated June 18, 2013 (collectively, the "**2012 Commitment Letter**"), MZG agreed to extend a new loan facility to the Debtor for the purpose of: (i) refinancing the First Loan and replacing the First Mortgage; and (ii) providing the Debtor with an additional \$1.4 million to fund interest accruing, working capital and closing costs (the "**2012 MZG Loan**"). A copy of the 2012 Commitment Letter is attached hereto as Exhibit "**F**".

20. Pursuant to the terms of the 2012 Commitment Letter, the parties agreed, among other things, that:

- a. MZG would take an assignment of the existing 1st mortgage on the Property. A copy of the Assignment Agreement is attached hereto as Exhibit "**G**";

- b. The Deferred Interest portion of the First Mortgage will be replaced with a new third charge (the "Deferred Interest Charge");
- c. MZG would receive a general security agreement over all of the assets and undertaking of 213 and the Baywood Homes Partnership, a copy of which is attached hereto as Exhibit "H"; and
- d. The MZG Loan would mature on January 5, 2014.

21. Pursuant to the terms of the 2012 Commitment Letter, The Bank of Nova Scotia Trust Company ("BNS Trust") holds an interest in the First Mortgage as trustee for various self-directed RRSP lenders listed in the schedule to the registered charge.

22. Concurrent with the 2012 MZG Loan, MZG and BNS Trust entered into an Acknowledgement and Postponement Agreement (the "Sussman Postponement") with the Sussman Group (as it was then constituted). Attached hereto as Exhibit "I" is a true copy of the Sussman Postponement Agreement.

23. In addition to the acknowledgment of the priority of the First Mortgage, the Sussman Postponement included the following terms:

"...the parties hereto agree as follows:

(C) [MZG/Scotia] postpone payment of Three Million Three Hundred Twelve Thousand Five Hundred (\$3,312,500.00) Dollars of the registered principal amount of the First Mortgage as assigned/amended...to payment of the full amount of the funds owing to the Second Mortgagees...

(D) The parties confirm and agree that the balance of the principal amount of the First Charge, as assigned and amended, being Fourteen Million Four Hundred Thousand (\$14,400,000.00) Dollars, together will [sic] all interest, costs and all other amounts owing thereunder shall be a first charge upon the Lands...

(H) MZG/Scotia agree to take no steps to collect the [Deferred Interest] through enforcement of its security against the Lands or any other security of any nature now or hereafter held by MZG/Scotia including any guarantees...until the Second Mortgagee has been fully paid out..."

24. Pursuant to a commitment letter dated June 14, 2013, MZG agreed to extend another loan to the Debtor in the principal amount of \$1.1 million for the purpose of funding the plan approval

process and interest costs (the "2013 MZG Loan"). As security for the 2013 MZG Loan, MZG obtained a mortgage on the Property in the principal amount of \$1.1 million (the "Third Mortgage"). The parties agreed that the Deferred Interest Charge will be postponed to the Third Mortgage. Attached hereto as Exhibit "J" is a true copy of the 2013 MZG Loan commitment letter.

SECURED CREDITORS

25. I am advised by MZG's legal counsel, Chaitons LLP, that a title search for the Property obtained from ServiceOntario on April 27, 2015, a copy of which is attached hereto as Exhibit "K" discloses the following registrations listed in order of priority:

- (a) the First Mortgage in the principal amount of \$17,712,500, a copy of which was previously attached hereto as Exhibit "D";
- (b) \$2,500,000 charge in favour of Sussman Mortgage Funding Inc. and Community Trust Company (collectively, the "Sussman Group") registered on January 5, 2010 as Instrument no. SC792819, a copy of which is attached hereto and marked as Exhibit "L";
- (c) The Third Mortgage in the principal amount of \$1,100,000 registered on September 6, 2013, as Instrument no. SC1083208, a copy of which is attached hereto and marked as Exhibit "M"
- (d) the Deferred Interest Charge in the principal amount of \$4,712,500 registered on November 30, 2012, as Instrument no. SC1028163, a copy of which is attached hereto and marked as Exhibit "N"; and
- (e) \$1,500,000 charge in favour of Baywood Homes Partnership, 626353 Ontario Limited, Nori Corp., Vaughancord Holdings Inc., 778788 Ontario Limited and Corner World Developments Inc. (collectively, the "Baywood Group") registered on September 8, 2011, as Instrument no. SC929834, a copy of which is attached hereto and marked as Exhibit "O". Although registered earlier in time than each of the charges described in subparagraphs (c) and (d), the Baywood Group charge was postponed in favour of each of those charges.

26. I am advised by Chaitons that it obtained a search from the Ontario Personal Property Security Registration System (the "PPSR") in respect of registrations which are outstanding

against the Debtor as at March 5, 2015, attached hereto as **Exhibit "P"**. The search discloses the particulars of the following registrations (in order of priority):

- a. MZG in respect of inventory, equipment, accounts, other & motor vehicles
- b. Sussman Mortgage Funding Inc. in respect of equipment, accounts, other & motor vehicles

27. A property tax search has been requisitioned, and will be available prior to the return of this application.

OMB PROCEEDINGS

28. In the course of the development of the project, the City refused or neglected to enact a zoning by-law to permit the redevelopment of the Property. The Debtor appealed this issue to the OMB. Ultimately, the appeal was settled, and the settlement was approved by the OMB in reasons dated November 22, 2013. Attached hereto as **Exhibit "Q"** is a true copy of the reasons for decision of the OMB.

29. The settlement explicitly provided that that OMB would not retain jurisdiction for clearing conditions of draft approval. Instead, the timing and satisfaction of those conditions would remain the purview of the City.

30. The City provided the Debtor with a set of 44 conditions which must be complied with in order to obtain approval of the plan of subdivision. Attached hereto as **Exhibit "R"** is a true copy of the draft plan of subdivision conditions.

31. Condition number 44 provides that the final plan of subdivision must be registered within 3 years of draft approval. MZG understands that this deadline will expire in May 2016. In the event a

further extension is required, it must be sought a minimum of 120 days prior to the expiry of the deadline.

32. On or around February 10, 2015, MZG requested that the Debtor execute an agency agreement authorizing MZG to apply for the requisite approvals with the City on the Debtor's behalf. The Debtor has not provided the requested consent and has refused to sign the proposed agreement. Attached hereto as **Exhibit "S"** is a true copy of the consent.

DEFAULT AND POWER OF SALE

33. The Debtor is in default of its obligations under the 2012 MZG Loan and the 2013 MZG Loan for, among other things, non-payment.

34. On February 27, 2014, MZG and BNS Trust issued demand letters and BIA Notices. Attached hereto as **Exhibit "T"** are true copies of the demands and BIA Notices.

35. No funds were received in response to the February 27, 2014 demand letters.

36. On April 8, 2014, the Applicants issued a Notice of Sale under the First Mortgage. The Notice of Sale claimed payment of \$17,507,824.23 as at May 18, 2014. Attached hereto as **Exhibit "U"** is a true copy of the April 8, 2014 Notice of Sale.

37. No funds were received in response to the demand for payment or the Notice of Sale

38. Pursuant to an agreement dated November 2014, MZG and BNS Trust agreed to sell the Property under power of sale. The purchase price under the agreement of purchase and sale was in an amount sufficient to satisfy all or substantially all claims of the Debtor's mortgagees. The agreement was conditional upon the buyer satisfying itself that all of the requisite building permits

have been obtained. As discussed above, building permits cannot be applied for until site plan approval is obtained.

39. A copy of the agreement of purchase and sale, along with a copy of the 'as is' appraisals obtained by MZG will be provided to the Court in a confidential appendix at the return of the application.

40. By its terms, the agreement of purchase and sale expired on February 27, 2015.

41. In my discussions with the purchaser's representative, I understand that the purchaser is prepared to resubmit its offer if the site plan approvals are obtained.

SUSSMAN GROUP COMMENCES ENFORCEMENT

42. On March 19, 2015, a notice of sale under the 2nd ranking Sussman Charge, requiring payment of the sum of \$4,988,565.00 in order to redeem the mortgage. Attached hereto as **Exhibit "V"** is a true copy of the Sussman notice of sale.

43. The Sussman notice of sale establishes a redemption period ending on April 28, 2015.

IT IS JUST AND CONVENIENT TO APPOINT A RECEIVER

44. The Debtor is in default of its obligations to the Applicants. The Applicants have demanded payment and have delivered the BIA Notices to the Debtor. The Debtor has failed to repay any amounts to the Applicants subsequent to the delivery of the demands.

45. The development of the Property has stalled. Without site plan approval the Applicants do not expect to recover the full amount of their loans. On the other hand, as indicated above, all of the Debtor's mortgagees would likely recover all or substantially all of their loans to the Debtor if the

Property is sold after site plan approvals are obtained. In the absence of the Debtor's cooperation, which has not been forthcoming, the site plan approval process cannot proceed.


46. MZG is prepared to advance funds to a receiver appointed by the Court so that the receiver can take all steps necessary to obtain site plan approval and sell the Property for the benefit of all stakeholders. MZG currently estimates the cost of obtaining site plan approval at \$400,000 - \$500,000, exclusive of the Receiver's fees and disbursements and that of its counsel.


47. I believe it is in the best interests of the Applicants and the Debtor's creditors generally that a receiver be appointed to take control over the Property, obtain site plan approval and sell the Property in an open and transparent manner for the benefit of all stakeholders.

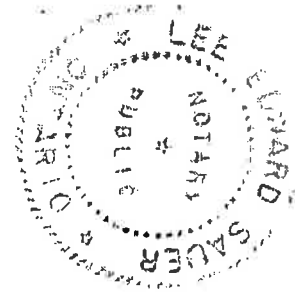
48. The Applicants propose that Collins Barrow be appointed as receiver. Collins Barrow has agreed to act, if appointed.

49. This affidavit is sworn in support of the Applicants' application for the appointment of a receiver over the Property and for no other or improper purpose.

SWORN BEFORE ME at the City)
of Waterloo in the Province of)
Ontario, this 29th)
day of April, 2015)


A Commissioner, etc.


Gregory Zehr



APPENDIX C

MARSHALLZEHR

— REAL ESTATE CAPITAL —

July 16, 2015

Collins Barrow Toronto Limited
11 King St. West
Suite 700, Box 27
Toronto, Ontario M5H 4C7

Attention: Bryan Tannenbaum, President

Dear Mr. Tannenbaum:

Re: MarshallZehr Group Inc. (the “**Lender**”) loan to Collins Barrow Toronto Limited in its capacity as Receiver of 2131059 Ontario Inc. (the “**Borrower**”)

The Lender is pleased to offer financing by way of a loan described in this letter agreement (the “**Agreement**”) subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency.

- Facility:** Non-revolving loan of up to \$3,000,000 (the “**Loan**”).
- Purpose:** The purpose of the Loan is to fund the costs of the receivership of 2131059 Ontario Inc. including the cost of obtaining site plan approval.
- Term:** The earliest of (i) demand; and (ii) twelve (12) months from the date of the initial advance (the “**Term**”), which may be extended for an additional twelve (12) months upon at least 30 days prior written notice by Borrower to Lender.
- Facility Advances:** Available by way of advances to the Borrower to be evidenced by a Receiver’s Certificate in a form satisfactory to the Lender each in the minimum amount of \$100,000.
- Interest Rate and Fees:**
- Interest: Annual rate of 12% calculated on the daily outstanding balance of the Loan and compounded monthly, not in advance and with no deemed reinvestment of monthly payments.
- Fee: A fee of \$100,000 will be due and payable to the Lender at the time of the first advance of the Loan and shall be deducted from the advance of the Loan.
- Expenses: The Borrower shall be responsible for all costs, fees and expenses incurred by the Lender in connection with the negotiation, preparation and administration of this Agreement and the enforcement of the Security (as hereinafter defined) including, without limitation, all court attendances in connection therewith. All such fees and expenses shall be added to the Loan and secured by the Security.
- Security:** All debts, liabilities, and obligations of the Borrower under the Loan shall be secured by the Receiver’s Borrowing Charge as defined in the Receivership Order (the “**Order**”) of the Honourable Regional Senior Justice Morawetz dated May 15, 2015, over all of the Property (as defined in the Order) (the “**Security**”).
- Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and

in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded quarterly shall be added to the Loan monthly on the last Business Day of each and every month during the Term.

Prepayment: The Loan can be repaid in whole or in part at any time without any fee or penalty upon three (3) Business Days written notice to the Lender.

Remedies: In the event that the Loan is not paid in full at the end of the Term, the Lender may exercise all rights and remedies available to it with Court appearance.

General: Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms hereof.

Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

Governing Law: This Agreement shall be construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

Counterparts: This Agreement may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Time: Time shall be of the essence in all provisions of this Agreement.

Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the entire agreement between the parties in respect of the Loan. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereof. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

Expiration: This Agreement must be accepted by the Borrower by no later than 5:00 pm on July 31st, 2015, after which this Agreement will expire.

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us.

We thank you for allowing us the opportunity to provide you with this offer of financing.

Yours truly,

MARSHALLZEHR GROUP INC.


Per: _____
Name: _____
Title: _____

I have authority to bind the Corporation.

ACCEPTANCE

The undersigned hereby accepts this Agreement this _____ day of _____, 2015.

COLLINS BARROW TORONTO LIMITED
in its capacity as Receiver of
2131059 Ontario Inc.

Per: _____
Name: Bryan Tannenbaum
Title: President
I have authority to bind the Corporation.