

Court File No. CV-20-00635523-00CL

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

MOTION RECORD

(motion for approval of sale transaction
(returnable May 10, 2021))

April 30, 2021

**PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP**

155 Wellington St. W., 35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TO: THE SERVICE LIST

SERVICE LIST
(current as of February 16, 2021)

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton and Sam Rappos Tel: (416) 218-1129 / (416) 218-1137 Fax: (416) 218-1849 / (416) 218-1837 E-mail: harvey@chaitons.com / samr@chaitons.com</p> <p>Lawyers for MarshallZehr Group Inc. and RSM Canada Limited</p>	<p>RSM CANADA LIMITED 11 King St. West, Suite 700, Box 27 Toronto, ON M5H 4C7</p> <p>Bryan Tannenbaum and Arif Dhanani Tel: (416) 238/5055 / (647) 725-0813 Fax: (416) 480-2646 Email: bryan.tannenbaum@rsmcanada.com / arif.dhanani@rsmcanada.com</p> <p>Court-appointed Receiver</p>
<p>PALIARE ROLAND 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Jeffrey Larry Tel: (416) 646-4330 Fax: (416) 646-4301 Email: jeff.larry@paliareroland.com</p> <p>Lawyers for RSM Canada Limited</p>	<p>DUNCAN, LINTON LLP 45 Erb St. E., PO Box 457, Stn. Waterloo Waterloo, ON N2J 4B5</p> <p>Irwin Duncan Tel: (519) 886-3340 Fax: (519) 886-8651 Email: iad@kwlaw.net</p> <p>Lawyers for Fernwood Developments (Ontario) Corporation, and Jordan and Rudi Zukowski</p>
<p>TARION WARRANTY CORPORATION 5160 Yonge Street, 12th Floor Toronto, ON M2N 6L9</p> <p>Tim Schumacher, Vice President & General Counsel E-mail: Tim.Schumacher@Tarion.com</p> <p>Danielle Peck, Senior Legal Counsel E-mail: Danielle.Peck@Tarion.com</p>	<p>TORYS LLP 79 Wellington Street West, 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2</p> <p>Adam Slavens Tel: (416) 865-7333 Fax: (416) 865-7380 Email: aslavens@torys.com</p> <p>Lawyers for Tarion Warranty Corporation</p>

<p>FRIEDMAN LAW PROFESSIONAL CORPORATION 150 Ferrand Drive, Suite 800 TORONTO, ON M3C 3E5</p> <p>Judy Hamilton Tel: (416) 496-3340 ext. 136 Fax: (416) 497-3809 Email: JH@friedmans.ca</p> <p>Lawyers for Pensio Property Management Group Inc.</p>	<p>LIPMAN, ZENER, WAXMAN LLP 100 Sheppard Avenue East, Suite 850, Toronto, ON M2N 6N5</p> <p>Allan Lipman Tel: (416) 789-0654 Fax: (416) 789-9015 Email: alipman@lzwlaw.com</p> <p>Lawyers for Bank of Montreal</p>
<p>BAYSHORE PROPERTY MANAGEMENT INC. 11 Ferris Lane Barrie, ON L4M 5N6</p> <p>Laura MacPhee Tel: (705) 722-3700 Ext: 235 Fax: (705) 722-6242 Email: lmacphee@bpmgmt.ca</p> <p>Property Manager</p>	<p>HODISLAW 62 Camelot Square Barrie, ON L4M 0C2</p> <p>Sonja Hodis Tel: (705) 737-4403 Fax: (705) 300-2599 Email: sonja@hodislaw.com</p> <p>Lawyers for Simcoe Standard Condominium Corporation No. 420</p>
<p>PAUL J. DAFFERN LAW FIRM 48 High Street Barrie, ON L4N 1W4</p> <p>Paul Daffern Tel: (705) 725-9670 Fax: (705) 725-8764 Email: paul.daffern@daffernlaw.com</p> <p>Lawyers for 1267989 Ontario Inc. o/a Duncan Drywall and Jeff McEver Plumbing and Contracting</p>	<p>RZCD LAW FIRM LLP 700-77 City Centre Drive Mississauga, ON L5B 1M5</p> <p>James Smith Tel: (905) 848-6100 x 228 Fax: (905) 896-1111 E-mail: jsmith@rzcdlaw.com</p> <p>Lawyers for Mack Constructions Inc.</p>
<p>MILLER THOMSON LLP Accelerator Building 295 Hagey Blvd., Suite 300 Waterloo, ON N2L 6R5</p>	<p>MILLER THOMSON LLP Ontario AGRICentre 100 Stone Road West, Suite 301 Guelph, ON N1G 5L3</p>

<p>Timothy McGurrin Tel: (519) 579-3660 Fax: (519) 743-2540 Email: tmcgurrin@millerthomson.com</p> <p>Lawyers for Priority Mechanical Services Ltd.</p>	<p>Michael McCluskey Tel: (519) 780-4659 Fax: (519) 822-1583 Email: mmclcluskey@millerthomson.com</p> <p>Lawyers for 224214 Ontario Ltd. o/a Nezz Electric and Grounded Electrical Services</p>
<p>GOWLING WLG (CANADA) LLP 50 Queen Street North P.O. Box 2248, Suite 1020 Kitchener, ON N2H 6M2</p> <p>Rosa Lupio Tel: (519) 575-7511 Fax: (519) 571-5011 E-mail: rosa.lupio@gowlingwlg.com</p> <p>Lawyers for 2150659 Ontario Inc. o/a Keller Williams</p>	<p>DOOLEY LUCENTI LLP 10 Checkley Street Barrie, ON L4N 1W1</p> <p>Andrew Wood Tel: (705) 792-7963 Fax: (705) 792-7964 Email: awood@dllaw.ca</p> <p>Lawyers for 2122201 Ontario Ltd. carrying on business as McKick Masonry and Wolfenden Construction Inc.</p>
<p>DEPARTMENT OF JUSTICE CANADA Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Diane Winters and Pat Confalone Tel: (416) 973-3172 Fax: (416) 973-0810 Email: Diane.Winters@justice.gc.ca / Pat.Confalone@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>	<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Insolvency Unit 33 King Street West Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>
<p>MARK GONNEAU Keller Williams Advantage Realty 1238 Queen Street East Toronto, Ontario Tel: (416) 995-2049 Email: info@markgonneau.com</p>	<p>STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p>Elizabeth Pillon Tel: (416) 869-5623 Email: lpillon@stikeman.com</p> <p>Lawyers for SV Law</p>

<p>CITY OF BARRIE c/o Mary Lyn Gervais, Billing Analyst Email: Mary-Lyn.Gervais@barrie.ca</p>	
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TAB 1

Court File No. CV-20-00635523-00CL

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

NOTICE OF MOTION

(motion for approval of sale transaction)
(returnable May 10, 2021)

RSM CANADA LIMITED (“RSM”), in its capacity as Court-appointed receiver of the property, assets and undertaking of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) will make a motion to a Judge of the Commercial List on Monday May 10, 2021 at 10:00 am or as soon after that time as the motion can be heard, by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by e-mailing Elizabeth Rathbone at elizabeth.rathbone@paliareroland.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order:
 - (a) authorizing and directing the Receiver to enter into an asset purchase agreement (the “**APA**”) with 2815864 Ontario Inc. (the “**Purchaser**”) and approving the sale transaction (the “**Transaction**”) contemplated thereby;
 - (b) vesting in the Purchaser the Debtor’s right, title and interest in and to the “Purchased Assets” (as defined in the APA), free and clear of all claims and encumbrances other than permitted encumbrances, upon delivery of a certificate by the Receiver to the Purchaser;
 - (c) approving the Receiver’s conduct and activities to April 30, 2021, as set out in the third report of the Receiver dated April 30, 2021 (the “**Third Report**”);
 - (d) authorizing and directing the Purchaser to pay the Receiver the Priority Payables (as defined in the APA) to be held in trust by the Receiver pending further order of this court or the consent of both MarshallZehr Group Inc. and the respective lien claimant for whom the Priority Payable is being held;
 - (e) sealing Confidential Appendix “1” to the Third Report pending closing of the Transaction or further Order of the Court; and

- (f) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

2. On February 12, 2020, RSM was appointed as Receiver over Fernwood's property, assets and undertaking pursuant to an Order of this Court (the "**Appointment Order**").
3. Fernwood was the developer of a 94 residential unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the "**Development**").
4. Fernwood owns 26 residential units (collectively, the "**Residential Units**") and 26 parking spaces (collectively, the "**Parking Spaces**") in the first two phases of the Development, and Phase 3 of the Development, which consists of 32 incomplete residential units (the "**Phase 3 Lands**", and together with the Residential Units and the Parking Spaces, the "**Real Property**").
5. MarshallZehr Group Inc. ("**MarshallZehr**") provided construction financing to Fernwood for the Development. MarshallZehr's security over Fernwood's property and assets includes a charge/mortgage over the Real Property and a general security agreement.

6. The Receiver has obtained an opinion that, subject to the usual qualifications and assumptions, MarshallZehr holds valid and enforceable security over Fernwood's property and assets.
7. Fernwood is indebted to MarshallZehr in excess of \$26.0 million for principal, interest, fees and costs (the "**Secured Debt**").

Sale Process

8. On July 7, 2020, the Court granted an order approving the Receiver's proposed sale process for the Real Property (the "**Sale Process**").
9. At the outset of the Sales Process, MarshallZehr also informed the Receiver that it wished to make a credit bid offer for substantially all of Fernwood's property and assets.
10. The Receiver carried out the Sale Process and received two offers for the Real Property, which were significantly less than the amount that Fernwood is indebted to MarshallZehr.
11. As a result, the Receiver entered into negotiations with MarshallZehr regarding a credit bid transaction.

APA

12. The Purchaser is a newly incorporated company that is affiliated with MarshallZehr. The Purchased Assets under the APA are substantially all of Fernwood's property, assets and undertaking.
13. A summary of the Transaction is as follows:
 - (a) **Purchase Price**: is in excess of \$25.25 million and is comprised of (i) approximately \$24.93 million of the Secured Debt, (ii) an amount necessary to satisfy all "Priority Payables" (as defined in the APA), (iii) all amounts secured by the Receiver's Charge under the Appointment Order and a further \$150,000 as an estimate of the fees and expenses to be incurred by the Receiver up to the Receiver's discharge, and (iv) assumption of certain liabilities, including the amount secured by the Receiver's Borrowings Charge under the Appointment Order;
 - (b) **Purchased Assets**: substantially all of Fernwood's property, assets and undertaking including the Real Property, the MZ Litigation (as defined below) and the Pensio Cause of Action (as defined below);
 - (c) **Closing**: the first business day following the expiry of the applicable appeal period for the approval and vesting order;
 - (d) **Representations and Warranties**: "as is, where is" transaction with limited representations and warranties;

- (e) **Material Condition**: issuance of an approval and vesting order.
14. Some stakeholders have raised the issue that there has been an increase in the residential property market, which may result in an increase in value of the units owned by Fernwood. Based on the results of the Sale Process, there is no reasonable prospect of generating a superior offer to the APA. As a result, the Receiver is firmly of the view that it is not in the best interests of Fernwood's creditors to undertake the significant time and cost to run an additional sale process.
15. The priority claims primarily relate to construction liens that are registered on the Phase 3 Lands. On closing, the Purchaser will pay to the Receiver in trust the maximum amount of each lien claimant's potential priority claim over MarshallZehr's security. Payment will be made on a without prejudice basis to any argument the Purchaser and/or MarshallZehr may make as to the validity, enforceability, quantum and/or priority of the construction liens, as set out further below.

Claims

16. The Purchased Assets includes Fernwood's interest in:
- (a) litigation commenced by Fernwood against MarshallZehr on the day before the Receiver's appointment (the "**MZ Litigation**"); and
 - (b) any cause of action (the "**Pensio Cause of Action**" and with the MZ Litigation, the "**Litigation Claims**") that Fernwood may have against

Pensio Property Management Group Inc., Ai Guarantee Inc., Nationwide Rentsure Canada Corp., and any affiliated parties (collectively, "**Pensio**").

17. The Receiver has not yet conducted an independent review or investigation into the allegations made by Fernwood in the MZ Litigation. As a result, the Receiver is not in a position to comment on whether there is any merit to the MZ Litigation.
18. Counsel to Fernwood and its former principals have corresponded with the Receiver and its counsel regarding the Litigation Claims, culminating in an offer for the Litigation Claims, which was delivered on February 25, 2021 (the "**Zukowski Offer**").
19. The Zukowski Offer sets out that the amount of the offer for the Litigation Claims, which based on certain terms and conditions, is: (i) Mr. Zukowski will pay the Receiver \$10,000; and (ii) 25% of the net proceeds of any settlement or final judicial determination of the Litigation Claims shall be paid to the Receiver upon receipt by the Plaintiff.
20. As is evident from the terms of the Zukowski Offer (including the fact that any meaningful realization is contingent on the successful prosecution of the Litigation Claims), it is clear that, on an aggregate basis, the Zukowski Offer is materially lower than MZ's offer for all of the Purchased Assets.

21. Based on the purchase price under the APA and the offers received, the Receiver is satisfied that fair consideration is being provided by the Purchaser for the Purchased Assets, including the Litigation Claims, even if the MZ Litigation and Pensio Cause of Action have merit.
22. As stated above, it is the Receiver's view that the aggregate consideration for all of the Purchased Assets (plus the funding of the Potential Priority Claims, as defined and described below) is materially in excess of any realization that the Receiver could expect to achieve if the assets were marketed and sold separately. The terms of the Zukowski Offer for the Litigation Claims only reinforce the Receiver's conclusion and recommendation. The Receiver's counsel set out this view in a letter to Fernwood's counsel dated March 30, 2021, rejecting the Zukowski Offer.
23. Based on the purchase price under the APA and the offers received, the Receiver is satisfied that fair consideration is being provided by the Purchaser for the Purchased Assets, including the Litigation Claims, even if the Litigation Claims have merit.

Priority Payables

24. Under the APA, on closing, the Purchaser is required to satisfy any amount that has priority over MarshallZehr's security. In addition to the claims discussed below, there is less than \$3,000 owed to Canada Revenue Agency in connection with an employee source deduction deemed trust amount.

25. Six parties have registered construction liens against the Phase 3 Lands with respect to goods and/or services supplied to Fernwood. Each of the lien claimants contracted directly with Fernwood.
26. The Receiver understands that MarshallZehr's Charge was registered on title to the Phase 3 Lands prior to the time the lien claimants started working on the Phase 3 Lands.
27. The Receiver has been advised by Paliare Roland that under the *Construction Act*, construction lien claimants have priority over mortgages that secured the financing of an improvement to the extent, among other things, of any deficiency in the holdbacks that an owner was required to retain. The *Construction Act* required Fernwood to maintain a basic holdback equal to ten per cent of the price of the services or materials supplied under each contract. As of the date of the Receiver's appointment, Fernwood was not retaining any holdback funds.
28. The Receiver has not yet determined the validity, enforceability, quantum or priority of any of the construction liens.
29. Rather, the Receiver has only attempted to determine the maximum amount of each lien claimant's potential priority claim over the Charge (the "**Potential Priority Claims**"). The Purchaser has agreed to pay the Potential Priority Claim amounts to the Receiver to be held in trust. Accordingly, in the Receiver's view, the lien claimants will be protected in the event their priority claims are ultimately established.

30. Four of the six lien claimants have each advised that they agree with the Potential Priority Claim calculations in respect of their clients.
31. Two of the lien claimants, Duncan Drywall and Jeff McKeever Plumbing (“**JMP**”), are represented by Paul Daffern of Paul J. Daffern Law Firm. Paliare Roland has advised the Receiver that Mr. Daffern does not agree with the Potential Priority Claim calculations in respect of his two clients.
32. In the case of JMP, the Receiver notes that JMP has not even made a claim for priority in its statement of claim with respect to its lien, nor did JMP name MarshallZehr, the mortgagee, as a party to the claim. Paliare Roland advises that both are required to validly assert priority over MarshallZehr’s Charge. In the circumstances, therefore, the Receiver proposes that the Purchaser pay to the Receiver in trust on closing \$21,198.96 in respect of JMP’s Potential Priority Claim, being 10% of the value of services provided by JMP.
33. In the case of Duncan Drywall, while Paliare Roland has advised Mr. Daffern that it is not aware of circumstances in which Duncan Drywall’s priority claim could exceed the Potential Priority Claim of \$24,000 (10% of the value of services supplied), to date Duncan Drywall maintains that it has priority over the Charge for the full amount of its lien of \$178,195, plus HST. In the circumstances and in the absence of any further agreement between the parties, on closing of the Transaction, the Purchaser will pay to the

Receiver in trust the full amount of Duncan Drywall's lien claim of \$178,195, plus HST.

34. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
35. The inherent jurisdiction of the Court.
36. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Third Report and the Appendices annexed thereto; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

April 30, 2021

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington St. W., 35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com
Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TO: THE SERVICE LIST

SCHEDULE "A"**Zoom Meeting**

<https://us02web.zoom.us/j/82121302061?pwd=cDh6LzlmQ2pVOFI5MnNwMEJNTzZsQT09>

Meeting ID: 821 2130 2061

Passcode: 915817

One tap mobile

+13017158592,,82121302061#,,,,*915817# US (Washington DC)

+13126266799,,82121302061#,,,,*915817# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 821 2130 2061

Passcode: 915817

Find your local number: <https://us02web.zoom.us/j/82121302061?pwd=cDh6LzlmQ2pVOFI5MnNwMEJNTzZsQT09>

MARSHALLZEHR GROUP INC.

-and- FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Applicant

Respondent

Court File No. CV-20-00635523-00CL

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

(motion for approval of sale transaction)
(returnable May 10, 2021)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington St. W., 35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330

jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488

elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver

TAB 2

Court File No. CV-20-00635523-00CL

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

THE HONOURABLE

)

MONDAY, THE 10th

JUSTICE

)

DAY OF MAY, 2021

)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Fernwood Developments (Ontario) Corporation (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 2815864 Ontario Inc. (the "Purchaser") and appended to the third Report of the Receiver dated April 30, 2021 (the "Third Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, and such other parties who appeared, and no one else appearing for any other person on the service list, although properly served as appears from the affidavit of Michelle Jackson sworn _____, 2021, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including the real property listed on Schedule B hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated February 12, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all

of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office (#51) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Purchaser to pay the Receiver the Priority Payables (as defined in the Sale Agreement) to be held in trust by the Receiver pending further order of this court or the consent of both MarshallZehr Group Inc. and the respective lien or other claimant for whom the Priority Payable is being held.

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

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser information in the Company's records. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

9. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS** that Confidential Appendix “1” to the Third Report be and hereby is sealed until the closing of the sale of the Properties.

11. **THIS COURT ORDERS** that this Order is effective from today’s date, and is not required to be entered.

12. **THIS COURT ORDERS AND DECLARES** that the Third Report and the conduct and activities of the Receiver to April 30, 2021 set out therein be and are hereby approved.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer

of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00635523-00CL

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Haaney of the Ontario Superior Court of Justice (the "Court") dated February 12, 2020, RSM Canada Limited was appointed as receiver (the "Receiver") of the undertaking, property and assets of Fernwood Developments (Ontario) Corporation (the "Debtor").

B. Pursuant to an Order of the Court dated _____, the Court approved the agreement of purchase and sale made as of _____ (the "Sale Agreement") between the Receiver and 2815864 Ontario Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 4.1, 4.2, and 4.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 4.1, 4.2, and 4.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**RSM Canada Limited, in its capacity as
Receiver of the undertaking, property
and assets of Fernwood Developments
(Ontario) Corporation, and not in its
personal capacity**

Per: _____

Name:

Title:

SCHEDULE B – Real Property

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

LEGAL DESCRIPTION OF CONDOMINIUM UNITS

PIN 59420 – 0001 LT

UNIT 1, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0010 LT

UNIT 10, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0011 LT

UNIT 11, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0014 LT

UNIT 14, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0022 LT

UNIT 22, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0025 LT

UNIT 25, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0030 LT

UNIT 30, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0031 LT

UNIT 31, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0033 LT

UNIT 33, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0042 LT

UNIT 42, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0043 LT

UNIT 43, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0046 LT

UNIT 46, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0054 LT

UNIT 54, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0057 LT

UNIT 57, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0062 LT

UNIT 62, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0063 LT

UNIT 63, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1354411; CITY OF BARRIE

PIN 59420 – 0065 LT

UNIT 65, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0066 LT

UNIT 66, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0068 LT

UNIT 68, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0069 LT

UNIT 69, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0071 LT

UNIT 71, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0072 LT

UNIT 72, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0073 LT

UNIT 73, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0077 LT

UNIT 77, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0078 LT

UNIT 78, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0081 LT

UNIT 81, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0087 LT

UNIT 87, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0088 LT

UNIT 88, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0089 LT

UNIT 89, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0090 LT

UNIT 90, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0091 LT

UNIT 91, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0092 LT

UNIT 92, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0093 LT

UNIT 93, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0094 LT

UNIT 94, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0095 LT

UNIT 95, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0096 LT

UNIT 96, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS ASSET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0098 LT

UNIT 98, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0099 LT

UNIT 99, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0101 LT

UNIT 101, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0102 LT

UNIT 102, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0103 LT

UNIT 103, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0104 LT

UNIT 104, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0108 LT

UNIT 108, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0111 LT

UNIT 111, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0112 LT

UNIT 112, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0117 LT

UNIT 117, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0119 LT

UNIT 119, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0120 LT

UNIT 120, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN SC1496430; CITY OF BARRIE

PIN 59420 – 0121 LT

UNIT 121, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND

TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS
IN SC1496430; CITY OF BARRIE

PIN 59420 – 0122 LT

UNIT 122, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO.
420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND
TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS
IN SC1496430; CITY OF BARRIE

PIN 59420 – 0123 LT

UNIT 123, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO.
420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND
TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS
IN SC1496430; CITY OF BARRIE

PIN 59420 – 0124 LT

UNIT 124, LEVEL 1, SIMCOE STANDARD CONDOMINIUM PLAN NO.
420 AND ITS APPURTENANT INTEREST; SUBJECT TO AND
TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS
IN SC1496430; CITY OF BARRIE

LEGAL DESCRIPTION OF LANDS

PIN 58831 - 1862LT

PART OF BLOCK 6, PLAN 51M983, PART 3 PLAN 51R40027;
SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027
AS IN SC1189600; TOGETHER WITH AN EASEMENT OVER
COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM
PLAN NUMBER 420 AS IN SC1354411; SUBJECT TO AN
EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF
SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN
SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN
51R40027 IN FAVOUR OF SIMCOE STANDARD
CONDOMINIUM PLAN NO. 420 AS IN SC1496430; TOGETHER
WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE
STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN
SC1496430; CITY OF BARRIE

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

A. From the Condominium Units

Instrument No.	Date	Type of Instrument	Amount	Party From	Party To
SC1107324	2013/12/19	Charge	\$15,000,000	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.
SC1107325	2013/12/19	Notice of Assignment of Rents- General	N/A	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.
SC1129839	2014/05/12	Postponement	N/A	Marshallzehr Group Inc.	The Corporation of the City of Barrie
SC1189601	2015/01/26	Postponement	N/A	Marshallzehr Group Inc.	Enbridge Gas Distribution Inc.
SC1372009	2016/12/15	Notice	\$2	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.
SC1544840	2018/10/01	Notice	\$2	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.

B. From the Lands

Instrument No.	Date	Type of Instrument	Amount	Party From	Party To
SC1107324	2013/12/19	Charge	\$15,000,000	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.

SC1107325	2013/12/19	Notice of Assignment of Rents-General	N/A	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.
SC1129839	2014/05/12	Postponement	N/A	Marshallzehr Group Inc.	The Corporation of the City of Barrie
SC1189601	2015/01/26	Postponement	N/A	Marshallzehr Group Inc.	Enbridge Gas Distribution Inc.
SC1372009	2016/12/15	Notice	\$2	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.
SC1544840	2018/10/01	Notice	\$2	Fernwood Developments (Ontario) Corporation	Marshallzehr Group Inc.
SC1661911	2020/02/13	Construction Lien	\$173,489	McKever, Jeffery	
SC1666408	2020/03/05	Construction Lien	\$178,195	1267989 Ontario Inc.	
SC1666613	2020/03/06	Construction Lien	\$28,740	Mack Constructions Inc.	
SC1670960	2020/03/27	Construction Lien	\$106,939	Grounded Electrical Services	
SC1671864	2020/04/01	Construction Lien	\$122,285	2242141 Ontario Inc.	
SC1673183	2020/04/07	Certificate	N/A	1267989 Ontario Inc.	
SC1675320	2020/04/20	Certificate	N/A	Mack Constructions Inc.	

SC1678660	2020/05/06	Certificate	N/A	Grounded Electrical Services	
SC1679011	2020/05/07	Certificate	N/A	2242141 Ontario Ltd.	
SC1699514	2020/08/05	Construction Lien	\$231,154	Priority Mechanical Services Ltd.	
SC1707668	2020/09/02	Certificate	N/A	Priority Mechanical Services Ltd.	

SCHEDULE D
Permitted Encumbrances, Easements and Restrictive Covenants
on Title

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to Title means:

- (a) any registered reservations, restrictions, rights of way, easements or covenants that run with the Condominium Units and Lands;
- (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
- (c) any minor easements for the supply of utility service to the Condominium Units and Lands or adjacent properties;
- (d) encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey matters generally;
- (e) the exceptions and qualifications set forth in the Land Titles Act (Ontario);
- (f) the reservations contained in the original grant from the Crown;
- (g) liens for Taxes if such Taxes are not due and payable;
- (h) Instrument No. SC966830 registered on March 6, 2012 being a Notice of Subdivision Agreement;
- (i) Instrument No. SC1129838 registered on May 12, 2014 being a Notice of Development Agreement;
- (j) Instrument No. SC1189600 registered on January 26, 2015 being a Transfer Easement;
- (k) Instrument No. SCP420 registered on October 24, 2016 being a Standard Condominium Plan;

- (l) Instrument No. SC1354411 registered on October 24, 2016 being a Condominium Declaration;
- (m) Instrument No. SC1359887 registered on November 8, 2016 being a Condominium By-Law No. 1;
- (n) Instrument No. SC1359888 registered on November 8, 2016 being a Notice Section 98;
- (o) Instrument No. SC1368462 registered on December 5, 2016 being a Condominium By-Law No. 2;
- (p) Instrument No. SC1496430 registered on March 9, 2018 being a Condominium Amendment to Declaration;
- (q) Instrument No. SC1499656 registered on March 26, 2018 being a Notice Section 98 Group Indemnity Agreement; and
- (r) Instrument No. SC1686283 registered on June 11, 2020 being a Notice of Security Interest.

MARSHALLZEHR GROUP INC.

Applicant

-and-

Court File No. CV-20-00635523-00CL

**FERNWOOD DEVELOPMENTS (ONTARIO)
CORPORATION**

Respondent

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>PROCEEDING COMMENCED AT TORONTO</p>	<p>APPROVAL AND VESTING ORDER</p>
<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West 35th Floor Toronto, ON M5V 3H1 Tel: 416.646.4300 Fax: 416.646.4301</p> <p>Jeffrey Larry (LSUC# 44608D) Tel: 416.646.4330 jeff.larry@paliareroland.com</p> <p>Elizabeth Rathbone (LSO# 70331U) Tel: 416.646.7488 elizabeth.rathbone@paliareroland.com</p> <p>Lawyers for the Receiver</p>	

TAB 3

Court File No. CV-20-00635523-00CL

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

THIRD REPORT OF THE RECEIVER

APRIL 30, 2021

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APPENDICES

Appendix “A”	Appointment Order
Appendix “B”	First Report of the Receiver (without appendices)
Appendix “C”	Approval Order
Appendix “D”	Legal Opinion
Appendix “E”	Asset Purchase Agreement
Appendix “F”	Statement of Claim
Appendix “G”	Letter dated February 9, 2021
Appendix “H”	Letter dated February 12, 2021
Appendix “I”	Letter dated February 18, 2021
Appendix “J”	Letter dated February 25, 2021
Appendix “K”	March 30 th Letter
Appendix “L”	Letter dated April 7, 2021
Appendix “M”	Correspondence between Paliare Roland and Paul Daffern

Appendix "N"	Letter dated December 21, 2020
Appendix "O"	Correspondence between Paliare Roland and DL LLP

INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by Fernwood, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order, together with other documents related to the receivership proceeding, has been posted on the Receiver’s website, which can be found at <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.
3. Pursuant to the Appointment Order, the Court authorized the Receiver to:
 - a. 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;
 - b. sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with Court approval in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amounts set out in paragraph 3(k)(i) of the Appointment Order; and

- c. 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.
4. On June 30, 2020, the Receiver issued its first report to the Court (the “**First Report**”) for the purpose of, among other things, seeking an order approving the Receiver’s proposed sale process for the Property (the “**Sale Process**”). A copy of the First Report (without appendices) is attached hereto and marked as **Appendix “B”**.
5. On July 7, 2020, the Court granted an order, among other things, approving the Sale Process (the “**Approval Order**”). A copy of the Approval Order is attached hereto and marked as **Appendix “C”**.

PURPOSE OF THE THIRD REPORT

6. The purpose of this third report of the Receiver (the “**Third Report**”) is to:
 - a. report to the Court on the execution and results of the Sale Process; and
 - b. request that the Court grant an order:
 - i. authorizing the Receiver to enter into an asset purchase agreement (the “**APA**”) with 2815864 Ontario Inc. (the “**Purchaser**”) and approving the sale transaction contemplated thereby (“**Transaction**”);

- ii. vesting in the Purchaser the Debtor's right, title and interest in and to the "Purchased Assets" (as defined in the APA), free and clear of all claims and encumbrances (other than permitted encumbrances), upon delivery of a certificate by the Receiver to the Purchaser;
- iii. approving the Receiver's conduct and activities to April 30, 2021, as set out in the Third Report;
- iv. authorizing and directing the Purchaser to pay the Receiver the Priority Payables (as defined in the Sale Agreement) to be held in trust by the Receiver pending further order of this court or the consent of both MarshallZehr Group Inc. and the respective lien claimant for whom the Priority Payable is being held;
- v. sealing Confidential Appendix "1" to this Third Report pending the closing of the Transaction or further order of the Court; and
- vi. such further and other relief as counsel may request and this Honourable Court may permit..

TERMS OF REFERENCE

7. In preparing this Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, 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 Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

BACKGROUND

9. Fernwood was the developer of a 94 residential unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the “**Development**”).
10. The Development was marketed as an investment opportunity, with the intention that purchasers would acquire the units and lease them to students at Georgian College in Barrie, Ontario.
11. Each of the three phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units (collectively, the “**Residential Units**”) and 26 parking spaces (collectively, the “**Parking Spaces**”) in these two phases of the Development.

12. Each of the Residential Units consists of a living area, 4 bedrooms and 4 bathrooms. There currently are 49 tenants of the Residential Units paying monthly rent in aggregate of approximately \$30,625.
13. Phase 3 of the Development, which consists of 32 residential units (the “**Phase 3 Lands**”), is incomplete and in various stages of construction. The residential units in Phase 3 have yet to be sold by Fernwood and are not subject to agreements of purchase and sale and have no tenants.
14. MarshallZehr Group Inc. (“**MarshallZehr**”) provided Fernwood with construction financing of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The Loan was repayable on demand and matured on September 1, 2019.
15. MarshallZehr’s security over Fernwood’s property and assets includes a charge/mortgage in the principal amount of \$22 million (the “**Charge**”) and a general assignment of leases and rents registered on title to the Residential Units, the Parking Spaces and the Phase 3 Lands (collectively, the “**Real Property**”), and a general security agreement (the “**GSA**”).
16. Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”), the Receiver’s independent counsel, has provided an opinion on the validity and enforceability of the security of MarshallZehr (the “**Legal Opinion**”), which indicates that, subject to the usual qualifications and assumptions, MarshallZehr holds a valid and perfected security interest in all of Fernwood’s personal property pursuant to the GSA, and the Charge with respect to Real Property constitute a valid and

enforceable first registered charge/mortgage. A copy of the Legal Opinion is attached hereto and marked as **Appendix “D”**.

17. The Receiver has been advised that Fernwood is indebted to MarshallZehr in excess of \$26.0 million for principal, interest, fees and costs (collectively, the **“Secured Debt”**).

SALE PROCESS

18. In accordance with the Approval Order, the Receiver carried out the Sale Process as follows commencing in July, 2020:
 - a. the Receiver contacted approximately 62 parties and provided a copy of the marketing brochure for the Real Property;
 - b. the Receiver advertised the Sale Process on July 14, 2020 in the Financial Post and on July 23, 2020 in the Barrie Advance; and
 - c. 23 parties signed a non-disclosure agreement and received a confidential information memorandum and access to a data room.
19. The Receiver extended the bid deadline from July 30, 2020 to August 14, 2020. The Receiver received two offers for the Real Property, which are summarized in a chart attached hereto and marked **Confidential Appendix “1”**.
20. At the outset of the Sales Process, MarshallZehr also informed the Receiver that it wished to make a credit bid offer for all of the Property.

21. As set out in Confidential Appendix “1”, the two offers were significantly less than the amount that Fernwood is indebted to MarshallZehr, and were subject to due diligence conditions.
22. As a result, the Receiver decided to reject the two offers. Based on its experience conducting the Sales Process, the Receiver concluded at the time that there was no reasonable prospect of selling the Real Property for an amount that could possibly come close to paying out MarhsallZehr’s indebtedness.
23. At the same time, MarshallZehr continued to express an interest in acquiring Fernwood’s assets through a credit bid. In the Receiver’s view, this was the most desirable approach. Accordingly, the Receiver began discussions with MarshallZehr on the structuring of such a transaction.
24. Given the complexities of a potential credit bid, it took time to work through numerous issues and scenarios including, among others, whether MarshallZehr would provide financing to the Receiver to complete the construction of the Phase 3 Lands or whether MarshallZehr would acquire the Real Property in its current state. Ultimately, MarshallZehr concluded that it wished to pursue a credit bid transaction with the Real Property in its current state. This was also the Receiver’s preferred option. The Receiver seeks an order sealing Confidential Appendix “1”, as it contains commercially sensitive information about the offers received during the Sale Process. In the Receiver’s view, this information should remain confidential until such time as the Transaction closes. In the event that the Transaction is not approved by the Court or fails to close and the Property needs

to be re-marketed, the disclosure of the commercially sensitive information in Confidential Appendix “1” could be prejudicial to any future sale process that may be required.

APA

Summary

25. The Purchaser has submitted a form of APA to the Receiver, a copy of which is attached hereto and marked as **Appendix “E”**. The Receiver has not yet signed the APA, pending Court authorization for the Receiver to enter into the APA. The Purchaser is a newly incorporated company that is affiliated with MarshallZehr. A summary of the Transaction is as follows:

- a. **Purchase Price**: is in excess of \$25.25 million and is comprised of (i) approximately \$24.93 million of the Secured Debt, (ii) an amount necessary to satisfy all “Priority Payables” (as defined in the APA), (iii) all amounts secured by the Receiver’s Charge under the Appointment Order and a further \$150,000 as an estimate of the fees and expenses to be incurred by the Receiver up to the Receiver’s discharge, and (iv) assumption of certain liabilities, including the amount secured by the Receiver’s Borrowings Charge under the Appointment Order
- b. **Purchased Assets**: substantially all of Fernwood’s property, assets and undertaking including the Real Property, the Litigation (as defined below) and the Pensio Cause of Action (as defined below);

- c. **Closing**: the first business day following the expiry of the applicable appeal period for the approval and vesting order
 - d. **Representations and Warranties**: “as is, where is” transaction with limited representations and warranties
 - e. **Material Condition**: issuance of an approval and vesting order
26. Some stakeholders have raised the issue that there has been an increase in the residential property market, which may result in an increase in value of the units owned by Fernwood. Based on the results of the Sale Process, there is no reasonable prospect of generating a superior offer to the APA. As a result, the Receiver is firmly of the view that it is not in the best interests of Fernwood’s creditors to undertake the significant time and cost to run an additional sale process at this time, notwithstanding an increase in the residential property market, if any.

Claims

27. The Purchased Assets includes Fernwood’s interest in:
- a. litigation commenced by Fernwood against MarshallZehr on the day before the Receiver’s appointment (the “**MZ Litigation**”); and
 - b. any cause of action (the “**Pensio Cause of Action**” and with the MZ Litigation, the “**Litigation Claims**”) that Fernwood may have against Pensio Property Management Group Inc., Ai Guarantee Inc., Nationwide Rentsure Canada Corp., and any affiliated parties (collectively, “**Pensio**”).

28. With respect to the MZ Litigation, it was commenced by statement of claim issued on February 11, 2020, a copy of which is attached hereto and marked as **Appendix “F”**.
29. The Receiver understands that the return date of MarshallZehr’s receivership application was originally scheduled for February 10, 2020. At the request of counsel to Fernwood, the hearing date was adjourned from February 10, 2020 to February 12, 2020. As set out above, the statement of claim in respect of the Litigation was issued on February 11, 2020.
30. The Receiver further understands that Fernwood did not oppose MarshallZehr’s application for the appointment of the Receiver.
31. The Receiver has not yet conducted an independent review or investigation into the allegations made by Fernwood in the MZ Litigation. As a result, the Receiver is not in a position to comment on whether there is any merit to the MZ Litigation.
32. On February 9, 2020, Paliare Roland sent a letter to counsel to Fernwood and the former principals of Fernwood to advise them of this motion (the “**February 9th Letter**”), which was originally returnable on February 24, 2021. Paliare Roland requested that, before the APA was finalized, the former principals of Fernwood confirm whether they have any interest in acquiring the MZ Litigation by 5 pm on February 12, 2020 and propose a purchase price. A copy of the February 9th Letter is attached hereto and marked as **Appendix “G”**.

33. Fernwood's counsel responded to Paliare Roland on February 12, 2021 to advise, among other things, that it needed more time to consider its client's position. Fernwood's counsel also sought confirmation that the Receiver would hold the sale of the MZ Litigation in abeyance. A copy of Fernwood's counsel's letter dated February 12, 2021 is attached hereto and marked as **Appendix "H"**.
34. On February 18, 2021, Paliare Roland responded to advise Fernwood's counsel that the motion was adjourned to March 12, 2021 and that, accordingly, their clients now had more than sufficient time to consider whether they had any interest in acquiring any of the Litigation Claims. Counsel requested that any offer for the Litigation Claims be submitted by February 25, 2021. A copy of Paliare Roland's letter dated February 18, 2021 is attached hereto and marked as **Appendix "I"**.
35. On February 25, 2021, Fernwood's counsel responded with an offer for the Litigation Claims (the "**Zukowski Offer**"). A copy of the Zukowski Offer is attached hereto as **Appendix "J"**.
36. The Zukowski Offer sets out that the amount of the offer for the Litigation Claims, based on certain terms and conditions, is: (i) Mr. Zukowski will pay the Receiver \$10,000; and (ii) 25% of the net proceeds of any settlement or final judicial determination of the Litigation Claims shall be paid to the Receiver upon receipt by the Plaintiff.
37. As is evident from the terms of the Zukowski Offer (including the fact that any meaningful realization is contingent on the successful prosecution of the Litigation

Claims), it is clear that, on an aggregate basis, the Zukowski Offer is materially lower than MZ's offer for all of the Purchased Assets.

38. Based on the purchase price under the APA and the offers received, the Receiver is satisfied that fair consideration is being provided by the Purchaser for the Purchased Assets, including the Litigation Claims, even if the MZ Litigation and Pensio Cause of Action have merit.
39. As stated above, it is the Receiver's view that the aggregate consideration for all of the Purchased Assets (plus the funding of the Potential Priority Claims, as defined and described below) is materially in excess of any realization that the Receiver could expect to achieve if the assets were marketed and sold separately. The terms of the Zukowski Offer for the Litigation Claims only reinforce the Receiver's conclusion and recommendation. The Receiver's counsel set out this view in a letter to Fernwood's counsel dated March 30, 2021, rejecting the Zukowski Offer (the "**March 30 Letter**"). The March 30 Letter is attached hereto as **Appendix "K"**.
40. Fernwood's counsel responded in a letter dated April 7, 2021, attached hereto as **Appendix "L"**.
41. With respect to the Pensio Cause of Action, as has been previously reported to the Court, Pensio acted as property manager, which included collecting rents and managing the units of the Development. In addition, Pensio provided a rental income guarantee, supported by a rental income insurance policy, to unit owners.

42. As set out in the First Report, the Receiver terminated Pensio's engagement in respect of the management of the Residential Units effective March 31, 2020. Pensio terminated its rental guarantee and rental income insurance policy to unit owners shortly thereafter, which the Receiver advised Fernwood's counsel of in the March 30 Letter.
43. There is an outstanding issue between Fernwood and Pensio as to whether Pensio has remitted all collected rents to Fernwood. This issue gives rise to the Pensio Cause of Action which, as stated above, is included in the Purchased Assets in the APA.

Priority Payables

44. Under the APA, on closing, the Purchaser is required to satisfy any amount that has priority over MarshallZehr's security. In addition to the claims discussed below, there is less than \$3,000 owed to Canada Revenue Agency in connection with an employee source deduction deemed trust amount.
45. Six (6) parties have registered construction liens against the Phase 3 Lands with respect to goods and/or services supplied to Fernwood. Each of the lien claimants contracted directly with Fernwood.
46. The Receiver understands that MarshallZehr's Charge was registered on title to the Phase 3 Lands prior to the time the lien claimants started working on the Phase 3 Lands.

47. The Receiver has been advised by Paliare Roland that under the *Construction Act*, construction lien claimants have priority over mortgages that secured the financing of an improvement to the extent, among other things, of any deficiency in the holdbacks that an owner was required to retain. The *Construction Act* required Fernwood to maintain a basic holdback equal to ten (10) per cent of the price of the services or materials supplied under each contract. As of the date of the Receiver's appointment, Fernwood was not retaining any holdback funds.
48. The Receiver has not yet determined the validity, enforceability, quantum or priority of any of the construction liens.
49. Rather, the Receiver has only attempted to determine the maximum amount of each lien claimant's potential priority claim over the Charge (the "**Potential Priority Claims**"). The Purchaser has agreed to pay the Potential Priority Claim amounts to the Receiver to be held in trust. Accordingly, in the Receiver's view, the lien claimants will be protected in the event their priority claims are ultimately established.

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50. The Receiver has calculated the Potential Priority Claims as follows:

<u>Lien Claimant</u>	<u>Quantum of Lien Claims</u>	<u>Potential Priority Claim (10% of value of services provided. Amount based on total contract value as stated in liens)</u>
Duncan Drywall	\$178,195.00 plus HST	\$ 24,000.00 plus HST
Ground Electrical Services	\$106,939.80	\$ 10,693.98
Jeff McKeever Plumbing	\$173,489.63	\$ 21,198.96
Priority Mechanical Services Ltd.	\$231,154.55	\$107,098.77
Nezz Electric	\$122,285.30	\$ 17,924.74
Mack Construction	\$ 28,740.00	\$ 2,874.00

51. Paliare Roland has been in contact with counsel to the lien claimants to confirm the quantum of the Potential Priority Claims.
52. Paliare Roland has informed the Receiver that counsel for Nezz Electric, Ground Electrical Services, Mack Construction, and Priority Mechanical Services have each advised that they agree with the Potential Priority Claim calculations in respect of their clients.
53. Two of the lien claimants, Duncan Drywall and Jeff McKeever Plumbing (“**JMP**”), are represented by Paul Daffern of Paul J. Daffern Law Firm. Paliare Roland has advised the Receiver that Mr. Daffern does not agree with the Potential Priority

Claim calculations in respect of his two clients. A copy of Paliare Roland's correspondence with Mr. Daffern is attached hereto and marked as **Appendix "M"**.

54. In the case of JMP, the Receiver notes that JMP has not even made a claim for priority in its statement of claim with respect to its lien, nor did JMP name MarshallZehr, the mortgagee, as a party to the claim. Paliare Roland advises that both are required to validly assert priority over MarshallZehr's Charge. In the circumstances, therefore, the Receiver proposes that the Purchaser pay to the Receiver in trust on closing \$21,198.96 in respect of JMP's Potential Priority Claim, being 10% of the value of services supplied as indicated in the chart above.
55. In the case of Duncan Drywall, while Paliare Roland has advised Mr. Daffern that it is not aware of circumstances in which Duncan Drywall's priority claim could exceed the Potential Priority Claim of \$24,000 (10% of the value of services supplied), to date Duncan Drywall maintains that it has priority over the Charge for the full amount of its lien of \$178,195, plus HST. In the circumstances and in the absence of any further agreement between the parties, on closing of the Transaction the Purchaser will pay to the Receiver in trust the full amount of Duncan Drywall's lien claim of \$178,195, plus HST.
56. The amounts being paid by the Purchaser to the Receiver in trust on closing are on a without prejudice basis to any argument the Purchaser and/or MarshallZehr may make as to the validity, enforceability, quantum and/or priority of the construction liens.

57. Paliare Roland was also contacted by Dooley Lucenti LLP (“**DL LLP**”), counsel to 2122201 Ontario Ltd. carrying on business as McKick Masonry (“**McKick**”), and Wolfenden Construction Ltd. (“**Wolfenden**” and together with McKick, the “**Trust Claimants**”). Neither of the Trust Claimants registered a construction lien against the Phase 3 Lands. Instead, the Trust Claimants take the position that any proceeds of sale of the Phase 3 Lands are trust funds under section 9(1) of the *Construction Act* for the benefit of parties that provided goods and/or services to Fernwood in connection with the Phase 3 Lands. A copy of DL LLP’s December 21, 2020 letter is attached hereto and marked as **Appendix “N”**.
58. Paliare Roland spoke on several occasions with DL LLP and exchanged email correspondence relating to the Trust Claimants’ claims, a copy of which email correspondence is attached hereto and marked as **Appendix “O”**.
59. As set out in the correspondence between counsel, McKick claims an amount owing of \$73,961 and Wolfenden claims an amount owing of \$36,914.
60. The Receiver has been advised by Paliare Roland that even if the Trust Claimants can establish their claim (which the Receiver has not yet reviewed or considered), such claims will not have priority over the Charge to the sale proceeds of land.
61. Specifically, section 9(1) of the *Construction Act* provides that any trust fund arises only after the payment of any existing mortgage indebtedness (and reasonable expenses from the sale). Given that the transaction contemplated in the APA will not result in the full repayment of all of the mortgage indebtedness, there will not be any recovery of proceeds for the owner, Fernwood, to which a trust claim might

apply. As a result, the Receiver is satisfied that the Trust Claimants' claims do not need to be addressed in the APA, nor does the Receiver propose to otherwise hold or provide for such amounts.

62. Paliare Roland communicated the Receiver's position on the trust claims to DL LLP in a February 11, 2020 email from Jeffrey Larry of Paliare Roland to Andrew Wood of DL LLP, which email is included in the email chain at Appendix "O" referenced above.

RECOMMENDATIONS

63. The Receiver respectfully recommends that the Court make the order it seeks detailed in paragraph 6 (b) above, as:
- a. the Receiver has made reasonable and good faith efforts to sell the Real Property;
 - b. a broad marketing of the Real Property was carried out by the Receiver in accordance with the Court-approved Sale Process;
 - c. the APA represents the highest and best offer received by the Receiver for the Real Property; and
 - d. the aggregate consideration for all of the Purchased Assets (plus the funding of the Potential Priority Claims) is materially in excess of any realization that the Receiver could expect to achieve if the assets were marketed and sold separately.

All of which is respectfully submitted, this 30th day of April, 2021.

RSM CANADA LIMITED

in its capacity as the Court-appointed receiver
of the property, assets and undertaking of
Fernwood Development (Ontario) Corporation
and not in its personal capacity



Per:

Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

APPENDIX A

Court File No. CV-20-00635523-00CL

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

THE HONOURABLE MR.)	WEDNESDAY, THE 12 th
)	
JUSTICE HAINEY)	DAY OF FEBRUARY, 2020

BETWEEN:



MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant 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 RSM Canada Limited as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (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 Murray Snedden sworn January 30, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and Pensio Property Management Group Inc., no one appearing for the Debtor, and on reading the consent of RSM Canada Limited to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion 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*, RSM Canada 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, including all proceeds thereof (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;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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;

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any 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 \$2.5 million (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.

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **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 <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.

27. **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.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. **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.

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

31. **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.

32. **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.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant'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.

34. **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:

FEB 12 2020

PER / PAR: *er*

Fairley J.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that RSM Canada Limited the receiver (the "**Receiver**") of the assets, undertakings and properties Fernwood Developments (Ontario) Corporation 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 12th day of February, 2020 (the "**Order**") made in an application having Court file number CV-20-00635523-00CL, 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__.

RSM CANADA LIMITED, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and- FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION
Respondent
Court File No. CV-20-00635523-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
PROCEEDING COMMENCED AT
TORONTO

ORDER
(appointing Receiver)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Sam Rappos (LSO No. 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Applicant

APPENDIX B

Court File No. CV-20-00635523-00CL

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

FIRST REPORT OF THE RECEIVER

JUNE 30, 2020

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INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by Fernwood, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
 - (a) take possession and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of, or from, the Property;
 - (b) manage, operate, and carry on the business of Fernwood, 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 Fernwood;
 - (c) 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 the Appointment Order; and

- (d) 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.
3. The Appointment Order empowers the Receiver to borrow by way of 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 \$2.5 million (or such greater amount as the Court may order), for the purpose of funding the administration of the receivership and the exercise of the Receiver's powers and duties.
4. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver's website, which can be found at <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.
5. In accordance with paragraph 25 of the Appointment Order, the Receiver has retained Chaitons LLP ("**Chaitons**") as its legal counsel for this receivership proceeding, except in circumstances where independent legal advice is required by the Receiver. The Receiver's independent legal counsel is Paliare Roland Rothstein Rosenberg LLP ("**Paliare Roland**").

PURPOSE OF THE FIRST REPORT

6. The purpose of this first report of the Receiver (the "**First Report**") is to:

- (a) report to the Court on the activities of the Receiver from February 12, 2020 (the “**Appointment Date**”) to the date hereof, which include, among other things:
- (i) communications with and request for information from Mr. Jordan Zukowski (“**Mr. Zukowski**”), the President and sole Director of Fernwood, and his legal counsel and with respect to certain information regarding a bank account opened by Fernwood with the Toronto-Dominion Bank (“**TD Bank**”), among other things;
 - (ii) the Receiver’s dealings with Fernwood’s property manager, Pensio Property Management Group Inc. and/or Pensio Global (“**Pensio**”), including Pensio’s retention of rent deposits paid by tenants of the Fernwood owned units in the Development (as defined below);
 - (iii) the Receiver’s request for information and documentation from Fernwood’s real estate counsel, Smith Valeriotte LLP (“**SV Law**”);
 - (iv) discussions the Receiver and/or Chaitons has had with Simcoe Standard Condominium Corporation # 240 (the “**Condo. Corp.**”), Condo. Corp.’s property manager, Bayshore Property Management Inc. (“**Bayshore**”), and the Condo. Corp.’s counsel regarding the payment of common area fee arrears and condominium liens registered by the Condo. Corp. against 25 units owned by Fernwood in the Development;

- (b) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period from February 12, 2020 to June 15, 2020 (the "R&D"); and
- (c) request the Court grant an Order or Orders:
 - (i) approving the Receiver's activities as set out in the First Report;
 - (ii) directing Pensio to pay to the Receiver \$30,258.06, which represents all rent deposits retained by Pensio in respect of the Fernwood owned units less the March 2020 property management fee payable to Pensio by the Receiver;
 - (iii) authorizing the Receiver to pay \$76,807 to the Condo Corp in connection with the condominium liens and outstanding common expenses owed since the Appointment Date;
 - (iv) approving the Receiver's proposed Sale Process (as defined below);
 - (v) approving the R&D; and
 - (vi) approving the fees and disbursements of the Receiver and Paliare Roland to May 31, 2020.

TERMS OF REFERENCE

7. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the First Report may refer to, or is based

on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, 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 Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

9. Fernwood is a corporation incorporated under the laws of the Province of Ontario and has its mailing address in Guelph, Ontario. A corporate profile report for Fernwood is attached hereto as **Appendix “B”**.
10. Fernwood is the developer of a 94-unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the “**Development**”). Each of the three phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units in these two phases of the Development (collectively, the “**Fernwood Owned Units**”).

11. Phase 3, which consists of 32 residential units, is incomplete and in various stages of construction. The residential units in Phase 3 have yet to be sold by Fernwood and are not subject to agreements of purchase and sale.
12. MarshallZehr Group Inc. (“**MZG**”) provided Fernwood with a loan of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The loan was repayable on demand and matured on September 1, 2019.
13. MZG’s security over Fernwood’s property and assets include a charge/mortgage in the principal amount of \$22 million and a general assignment of leases and rent, both of which are registered on title to the Fernwood Owned Units and Phase 3 of the Development, and a general security agreement.
14. On January 21, 2020, MZG demanded repayment of the Loan from the Debtor and sent a Notice of Intention to Enforce Security pursuant to the provisions of the *Bankruptcy and Insolvency Act (Canada)*.
15. Fernwood did not repay the Loan. MZG brought an application with the Court for the appointment of a receiver. On February 12, 2020, the Court issued the Appointment Order in which RSM was appointed as Receiver. Fernwood did not oppose the appointment of the Receiver.

RECEIVER’S ACTIVITIES TO DATE

16. Set out below is a summary of the Receiver’s activities since its appointment, certain of which are discussed in greater detail later in the First Report:

- (a) immediately after its appointment, the Receiver contacted Mr. Zukowski to request a meeting. Mr. Zukowski advised that he was not able to meet with the Receiver until the following week;
- (b) attended at Fernwood's offices in Barrie, Ontario on February 20, 2020 and met with Mr. Zukowski (the "**Initial Meeting**") to discuss the receivership proceeding and to ascertain the location of Fernwood's books and records. Mr. Zukowski provided the Receiver with certain information, including details regarding Fernwood's bank accounts with Bank of Montreal ("**BMO**"). Mr. Zukowski advised the Receiver that the majority of Fernwood's books and records were with Royal City Bookkeeping Services Inc. ("**RCBS**");
- (c) wrote to BMO to request that all bank accounts in the name of Fernwood be frozen and to allow deposits, but no withdrawals from those accounts;
- (d) contacted RCBS to obtain additional information in respect of Fernwood, including the names, addresses and amounts owing to Fernwood's creditors, an aged accounts receivable listing and a balance sheet;
- (e) sent a Notice and Statement of Receiver pursuant to Section 245(1) of the Bankruptcy and Insolvency Act (the "**245 Notice**") to the known creditors of Fernwood via regular mail. The known creditors were compiled from a Personal Property Security Registration System search conducted by the Receiver and from a list of creditors provided by RCBS. A copy of the 245 Notice is attached hereto as **Appendix "C"**;

- (f) arranged for the redirection of mail from two addresses provided by Mr. Zukowski to the Receiver's business address. The mail redirection commenced on February 27, 2020;
- (g) opened an HST account with Canada Revenue Agency;
- (h) opened a trust account at BMO for the receipts and disbursements relating to the receivership administration;
- (i) contacted Pensio, Fernwood's property manager prior to the appointment of the Receiver, in order to ascertain Pensio's role and to request that Pensio assist the Receiver with collection of rents for the Fernwood Owned Units for the month of March 2020;
- (j) terminated Pensio's engagement as property manager and entered into a property management agreement with Subhkin Management Inc. ("**Subhkin**"), an independent property manager, to manage the Fernwood Owned Units and Phase 3 of the Development;
- (k) contacted the City of Barrie, Alectra Utilities and Rogers to open new accounts in the name of the Receiver in order that service to the Development was not interrupted; and
- (l) obtained a copy of Fernwood's insurance documents to review the current insurance coverage for the Development. The Receiver contacted Fernwood's insurer, Federated Insurance, and has been added as an

additional named insured and loss payee on Fernwood's insurance policies.

The current policy term expires on January 15, 2021.

BANK ACCOUNT AT TORONTO DOMINION BANK ("TD Bank")

17. On February 26, 2020, RCBS confirmed that Fernwood had two bank accounts with BMO and one account at TD Bank, bearing account # 5254264 (the "**TD Bank Account**"). RCBS further advised that it did not have any details for the TD Bank Account and that it would request bank statements from the TD Bank.
18. The existence of the TD Bank Account was not previously disclosed to the Receiver by Mr. Zukowski.
19. On February 26, 2020, the Receiver wrote to TD Bank to request that TD Bank freeze the TD Bank Account and any other accounts with TD Bank in the name of Fernwood. On February 27, 2020, TD Bank confirmed that the TD Bank Account was frozen. The TD Bank Account is discussed in more detail below.
20. On February 28, 2020, TD Bank provided the Receiver with a printout setting out the transactions relating to the TD Bank Account (the "**TD Statement**"), which account was opened on October 28, 2019. As at January 21, 2020, the TD Bank Account had an overdraft balance of \$22.01.
21. The Receiver reviewed the TD Statement and notes that:
 - (a) on October 28, 2019, there was a deposit of \$531,363.09 (the "**Deposit**") to the TD Bank Account; and

- (b) on October 31, 2019 and November 5, 2019, amounts of \$250,000 and \$225,000, respectively, were transferred (the “**Transfers**”) from the TD Bank Account to bank account bearing account number 6464509 (the “**646 Account**”), which account is also with TD Bank.
22. On March 2, 2020, the Receiver wrote to RCBS requesting information on how the Deposit and Transfers were recorded in Fernwood’s general ledger. RCBS advised the Receiver that the accounting for these transactions had not yet been completed.
23. On March 3, 2020, the Receiver wrote to RCBS to request further information from the books and records of Fernwood and to follow up on the TD Bank Account transactions. RCBS responded that it had not had the opportunity to gather the information and that the information would be provided to the Receiver shortly.
24. On March 4, 2020, RCBS informed the Receiver that RCBS was unwilling to provide the Receiver with any further information until its outstanding accounts with Fernwood were paid.
25. On March 6, 2020, the Receiver wrote to RCBS to advise that RCBS’ position in respect of non-provision of the information requested by the Receiver pending payment of its unpaid account was in breach of the Appointment Order and that the Receiver would seek an order for contempt and costs, if RCBS continued to withhold information in respect of Fernwood.

26. On March 9, 2020, RCBS responded to the Receiver that RCBS would review the Receiver's correspondence and get back to the Receiver.
27. After an exchange of correspondence between counsel for RCBS and the Receiver, on March 13, 2020, RCBS, through its counsel, agreed to provide the requested information by April 10, 2020.
28. On March 16, 2020, the Receiver wrote to Mr. Zukowski requesting further details of Fernwood's assets (the "**March 16th Letter**"), including the TD Bank Account. On March 18, 2020, Duncan, Linton LLP, counsel to Mr. Zukowski ("**Duncan, Linton**") wrote to the Receiver (the "**March 18th Letter**") to advise that, among other things, Mr. Zukowski was compiling a package of information relating to the TD Bank Account. Copies of the March 16th Letter and the March 18th Letter are attached hereto as **Appendices "D" and "E"**, respectively.
29. As both RCBS and Mr. Zukowski advised the Receiver that they required additional time to provide the Receiver with the information requested by the Receiver, including information on the TD Bank Account, the Receiver wrote to TD Bank on March 18, 2020 to request transaction details in respect of the Deposit and Transfers.
30. On March 19, 2020, TD Bank provided the Receiver with details on the Deposit and Transfers, as follows:
 - (a) TD Bank provided a copy of a cheque in the amount of \$531,363.09 from Tarion Warranty Corporation ("**Tarion**") payable to Fernwood (the "**Tarion**")

Cheque”), which cheque represents the Deposit. A copy of the Tarion Cheque is attached hereto as Appendix “**F**”; and

- (b) the 646 Account to which the Transfers were made is a joint personal account in the names of Mr. Zukowski and Rudi Zukowski, who the Receiver understands is Mr. Zukowski’s father.
31. The Receiver communicated with Tarion regarding the Tarion Cheque and was advised by Tarion that the Tarion Cheque represented a release of a portion of Tarion’s security over the Development, which security was previously provided to Tarion by Fernwood.
32. On March 23, 2020, Paliare Roland wrote to Duncan, Linton (the “**March 23rd Letter**”) to follow up on various outstanding information, including information about the TD Bank Account. A copy of the March 23rd Letter is attached hereto as **Appendix “G”**.
33. On March 26, 2020, the Receiver contacted TD Bank to see if TD Bank could provide the Receiver with details regarding the 646 Account. On March 27, 2020, TD Bank informed the Receiver that it could not provide details of the 646 Account without an order of the Court directing it to do so.
34. On March 27, 2020, Duncan, Linton wrote to Paliare Roland (the “**March 27th Letter**”) to advise, among other things, that all information in Mr. Zukowski’s possession concerning the TD Bank Account would be sent to the Receiver the

following week. A copy of the March 27th Letter is attached hereto as **Appendix “H”**.

35. On March 30, 2020, Paliare Roland wrote to Duncan, Linton to request that a response to the Receiver’s information request in respect of the TD Bank Account be provided by noon on April 1, 2020, as the Receiver had initially requested the information from Mr. Zukowski on March 16, 2020.
36. On April 1, 2020, Duncan, Linton provided Paliare Roland with a reconciliation (the **“Reconciliation”**) of the TD Bank Account, which is summarized below:

Receipts

Tarion deposit	<u>\$531,363.09</u>
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Disbursements

Utilities, insurance, accounting, bookkeeping and other Development Expenses	\$109,258.21
Corporate Mastercard	41,969.24
Smith Valeriotte LLP (SV Law)	7,507.50
Duncan Linton LLP (Zukowski Counsel)	21,853.10
Schneider Ruggiero LLP	21,961.98
Employee wages and expenses	41,836.31
Expenses - Jordan Zukowski	63,926.06
Management fees - Jordan Zukowski	230,000.00
Management fees - Rudi Zukowski	158,200.00
Bank charges	<u>44.01</u>
Total expenses per reconciliation	<u>\$696,556.41</u>

Owed to Jordan Zukowski	<u>(\$165,193.32)</u>
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37. On April 6, 2020, Paliare Roland wrote to Duncan, Linton (the **“April 6th Letter”**) to ask whether the management fees claimed by Mr. Zukowski and his father were accrued in Fernwood’s financial statements and to request receipts for the expenses claimed by Mr. Zukowski. On April 23, 2020 (the **“April 23rd Response**

Letter”), Duncan, Linton responded that the management fees were not accrued in Fernwood’s financial statements, but they were budgeted for. Duncan, Linton advised that receipts for Mr. Zukowski’s expenses would be provided once received from RCBS. To date, no expense receipts have been provided to the Receiver. Copies of the April 6th Letter and April 23rd Response Letter are attached hereto as Appendices “**I**” and “**J**”, respectively.

38. The Reconciliation does not reflect all the entries that concludes with the TD Bank Account overdraft balance of \$22.01 set out on the TD Statement, as the Reconciliation appears to reflect only certain of the transactions set out in the TD Statement.
39. The TD Statement sets out that on various dates, business expenses and bank charges totaling \$202,601.54 were paid from the TD Bank Account. The Receiver also notes that funds were transferred back to the TD Bank Account from the 646 Account in order to pay certain expenses. Based on the Receiver’s review, it appears that a net amount of \$328,761.55 was transferred to the 646 Account in favour of Mr. Zukowski and his father, Rudi.

PENSIO

40. As set out above, on the date of the Receiver’s appointment, Pensio was the property manager of the Development.
41. On February 18, 2020, Chaitons contacted Pensio’s counsel, Friedman Law Professional Corporation (“**Friedmans**”), to request from Pensio a breakdown and reconciliation detailing all rent that has been paid for each of the regarding the

Fernwood Owned Units to date. In addition, Chaitons advised Friedmans that all rents paid by tenants of the Fernwood Owned Units were to be sent to the Receiver, without deduction, in accordance with the Appointment Order.

42. On February 19, 2020, Friedmans provided to Chaitons, among other things, a rent roll for February 2020 and a reconciliation (the “**Pensio Reconciliation**”) based on information that was sent to Friedmans by Pensio. Friedmans requested that the Receiver directly contact Mr. Brandon Keks (“**Mr. Keks**”), Chief Operating Officer of Pensio, for any further information. According to the Pensio Reconciliation, after a series of advances made by Pensio to Fernwood, the net amount claimed by Pensio to be owed to it by Fernwood as at the date of the Receiver’s appointment is \$490,467. A copy of the Pensio Reconciliation is attached hereto as **Appendix “K”**.

43. On February 21, 2020, the Receiver discussed the Pensio Reconciliation with Mr. Keks. Based on that discussion, the Receiver understands the following:
 - (a) Pensio and/or its related companies, including Nationwide Rentsure Canada Corp. and Ai Guarantee Inc., entered into an agreement with Fernwood to provide a rental guarantee program (the “**Rental Guarantee Program**”) in order for Fernwood to be able to sell Development units at a premium, as well as property management services to Fernwood and other unit owners. The Rental Guarantee Program provided unit owners with a form of insurance such that the difference between rent collected on a particular unit and \$2,500 would be paid by Pensio to the unit owner.

Property management services were provided at a rate of 6% of rent collected by Pensio;

- (b) Mr. Keks claims that Fernwood owes Pensio approximately \$2.3 million, including HST, for fees related to the Rental Guarantee Program plus an additional \$1.0 million fee for assistance with settling a potential lawsuit for breach of contract and non-payment of real estate commissions between Keller Williams Realty, the initial real estate broker engaged by Fernwood, and Fernwood. Mr. Keks indicated that the fees of \$2.3 million in respect of the Rental Guarantee Program were payable to Pensio in advance of the sale of any of the units in the Development. Based on the Pensio Reconciliation, it appears that Fernwood paid Pensio \$1.4 million, resulting in the balance of \$1.9 million being unpaid and outstanding; and
- (c) as Fernwood did not pay the full amount claimed by Pensio, commencing in June 2017, Pensio started retaining rents collected and applying the amounts collected against its outstanding fees. As the Receiver understood that Fernwood provided a general assignment of leases and rents in favour of MZG, the Receiver requested that Mr. Keks provide the Receiver with documentation evidencing MZG's consent to Pensio retaining the rents collected and offsetting them against its outstanding fees. Mr. Keks advised that while there was no formal signed agreement, MZG agreed to this practice. Pensio provided an email exchange between Murray Snedden of MZG and John Hamilton of Pensio between February 25 and 28, 2019. A copy of the email exchange is attached hereto as **Appendix "L"**.

44. The Receiver advised Mr. Keks that the Receiver would not be paying Pensio's claim of \$490,467, but that it may be willing to continue with Pensio as property manager of the Fernwood Owned Units. In addition, the Receiver further advised Mr. Keks that there may be some additional role in the receivership administration for Pensio, including providing assistance to the Receiver to sell the Fernwood Owned Units, depending on the circumstances.
45. During March 2020, the Receiver obtained further information from various sources regarding Pensio and its relationship with Fernwood and MZG. On the basis that there appeared to be various disagreements and issues amongst the parties, the Receiver concluded that the appointment of an independent property manager was appropriate.
46. On March 25, 2020, the Receiver advised Pensio that, effective from April 1, 2020, the Receiver engaged Subhkin to act as the property manager over the Fernwood Owned Units. During the period March 25, 2020 to March 31, 2020, Subhkin transitioned property management duties from Pensio.
47. On April 1, 2020, the Receiver emailed Pensio to request that tenant rent deposits for March 2020 (the "**Rent Deposits**") be paid to the Receiver. The Receiver's understanding, based on the leases reviewed by Subhkin, was that the Rent Deposits in the possession of Pensio totaled approximately \$55,000. Mr. Keks advised the Receiver that Pensio was completing a reconciled accounting for all the investor owners in the Development in addition to the Fernwood Owned Units.

After the Receiver's follow up emails, Mr. Keks advised the Receiver on April 7, 2020 that a reconciliation would be provided to the Receiver on April 8, 2020.

48. On April 6, 2020, it came to the Receiver's attention that on April 3, 2020 Pensio sent an email to the tenants of the Fernwood Owned Units requesting that they pay their April 2020 rent to Pensio. The Receiver contacted Mr. Keks on this matter and requested that Pensio remit all rents collected for April 2020 to the Receiver. Mr. Keks advised that he was not aware of the request to tenants and that an automated message was likely sent out from Pensio's property management system. Mr. Keks subsequently advised the Receiver that any rents collected for April 2020 by Pensio had been returned to the applicable tenant(s). Subhkin has subsequently contacted all tenants in Fernwood Owned Units to collect rent for April 2020, as appropriate.
49. In March 2020, Pensio collected rent in respect of the Fernwood Owned Units totaling \$48,480 and remitted same to the Receiver. The Receiver's arrangement with Pensio was to pay 6% of rent collected by Pensio as a property management fee. Mr. Keks, on several occasions, has pressed the Receiver to pay its property management fee totaling \$3,286.94, including HST. The Receiver responded that it would not pay the fee as Pensio had not remitted the Deposits to the Receiver.
50. On April 14, 2020, the Receiver followed up with Mr. Keks to confirm that it had not received any reconciliation, nor had any of the rent deposits held by Pensio been sent to the Receiver.

51. On April 15, 2020, Mr. Keks wrote to the Receiver (the “**April 15th Email**”) and provided a reconciliation of the rent deposits held by Pensio, which totaled \$33,545, and advised that Pensio would be setting off the Rent Deposits against the unsecured amount owed to Pensio by Fernwood. A copy of the April 15th Email is attached hereto as **Appendix “M”**.
52. On April 28, 2020, Paliare Roland wrote to Pensio (the “**April 28th Letter**”) to advise that: (i) Pensio had no right to offset the Rent Deposits it received on behalf of Fernwood on the basis that the Rent Deposits were held by Pensio in trust for Fernwood; and (ii) the Appointment Order precluded set-off as all rights and remedies against Fernwood’s Property are stayed and suspended. The April 28th Letter requested that Pensio remit to the Receiver the amount of the Rent Deposits, net of the March 2020 property management fee of \$3,286.94 owed by the Receiver to Pensio. A copy of the April 28th Letter is attached hereto as **Appendix “N”**.
53. As no response to the April 28th Letter was received, Paliare Roland sent an email to Mr. Keks on May 13, 2020 to request a response to the April 28th Letter and copied Friedmans. Mr. Keks responded to advise that a complete response would be provided to Paliare Roland that week.
54. On May 25, 2020 (the “**May 25th Email**”), Mr. Keks wrote to the Receiver to advise that Pensio would pay \$29,383.06 to the Receiver. The May 25th Email indicates that rent deposits of \$33,595 were held by Pensio and that in addition to the amount of the property management fees owed to it by the Receiver, Pensio was

deducting \$925 for “offset default rent” for two tenants that had not paid rent, which resulted in forfeiture of their deposits. The Receiver does not agree with Pensio that the last month’s rent claimed to be “offset default rent” totaling \$925 can be offset against Pensio’s program fees. A copy of the May 25th Email is attached hereto as Appendix “O”.

55. To date, no amount has been paid by Pensio to the Receiver in respect of the Rent Deposits. The Receiver is therefore seeking an Order requiring Pensio to pay to the Receiver \$30,318.06, which represents the Rent Deposits retained by Pensio (as per the May 25th Email) in respect of the Fernwood Owned Units less the March 2020 property management fee payable to Pensio by the Receiver.

SV LAW

56. As set out previously in this report, Mr. Zukowski advised the Receiver that the majority of Fernwood’s books and records were with RCBS. Following the Receiver’s appointment, the Receiver sought information from RCBS in respect of the 36 units in the Development sold by Fernwood to third parties (the “**Third-Party Units**”). In order to confirm that the proceeds of sale of the Third Party Units were sent to the appropriate parties, the Receiver requested copies of the agreements of purchase and sale for the Third-Party Units, the trust ledgers for same and details of where the proceeds of sale for those units were directed.
57. RCBS advised the Receiver that RCBS did not have copies of the agreements of purchase and sale; however, it had copies of certain of the closing statements of adjustments and trust ledgers, but that it did not have all of the information. The

Receiver then contacted SV Law, the law firm which represented Fernwood on the sale of the Third-Party Units, to obtain the subject documents.

58. On March 10, 2020, the Receiver wrote to SV Law seeking information and documentation in respect of the sale of the Third-Party Units and details of the security provided to Tarion. On March 18, 2020, the Receiver sent a further email to SV Law to follow up on the request sent on March 10, 2020.
59. On March 18, 2020, SV Law responded that the Fernwood file and any information the Receiver was seeking was subject to solicitor-client privilege, that SV Law was not in a position to waive that privilege, and that Fernwood was not waiving the privilege.
60. On the basis that the Receiver was unable to obtain the information it sought from RCBS and SV Law, it requested that MZG provide the information, if it was in possession of it. MZG was able to provide certain of the information sought by the Receiver; however, MZG was unable to provide the Receiver with complete information concerning the sale of all Third-Party Units.
61. As set out above, the Receiver requires the information and documentation so that it can confirm that the proceeds of sale of the Third-Party Units were sent to the appropriate parties. The Receiver has attempted to obtain such documentation from all possible sources and has been unable to obtain to date complete information relating to the sale of units to third parties or documentation in respect of Tarion.

62. On June 16, 2020, Chaitons wrote to SV Law (the “**SV Law Email**”) to advise that the Receiver required certain information that it was unable to obtain from other sources. On that same day, Chaitons wrote to Duncan Linton (the “**June 16th Email**”), with a copy of the correspondence to SV Law, to ask if Fernwood or the Zukowskis had any issue with SV Law providing the Receiver with the requested information and documents. Copies of the SV Law Email and June 16th Email are attached hereto as Appendices “**P**” and “**Q**”, **respectively**.
63. On June 23, 2020, Mr, Duncan, on behalf of Fernwood, confirmed in writing that Fernwood did not object to SV Law producing the requested documentation and information sought by the Receiver with respect to the sale of the Third Party Units. A copy of Mr. Duncan’s letter is attached hereto as Appendix “**R**”.
64. The Receiver is currently in discussions with SV Law and its independent counsel regarding the timing of the production of the requested documents, as SV Law’s files were in off-site storage and the requested documents need to be scanned.

CONDO. CORP.

Liens

65. As at the date of the Receiver’s appointment, the main accounts for water, hydro and internet were in the name of Fernwood, notwithstanding that the condominium declaration for the Development was registered in 2016, which resulted in the incorporation of the Condo. Corp., and the Condo. Corp. had retained Bayshore to be its property manager.

66. On February 14, 2020, Bayshore wrote to Fernwood, BMO and MZG to advise that it intended to register liens against the Fernwood Owned Units for non-payment of common area fees for the months of December 2019, January 2020 and February 2020, if unpaid common area expenses of \$999 per unit were not paid by February 24, 2020. Bayshore also advised that it \$1,000 per unit would be added to the Condo. Corp.'s lien, representing costs and reasonable expenses to be incurred by the Condo. Corp. in connection with the collection or attempted collection of the \$999 per unit, as well as the cost of the title search and notice of lien (the "**Lien Costs**").
67. In reviewing this matter, it appears that Fernwood had not paid any common area fees to the Condo. Corp. for a significant period of time. Based on the account statements provided by Bayshore, the Receiver understands that MZG directly paid \$1,830 per unit to the Condo. Corp. in March 2019, which appears to be the accrued balance of common area fees from April 1, 2018 to November 30, 2018.
68. On February 19, 2019, Chaitons contacted Bayshore's paralegal to seek an extension to Bayshore's February 24, 2020 deadline to pay the outstanding amount of \$999 per unit as the Receiver was in the process of obtaining an advance from MZG to fund costs of the receivership. On February 19, 2020, Bayshore responded to Chaitons to advise that the Condo. Corp.'s board of directors had provided instructions to proceed with lien registrations on February 28, 2020, if the \$999 for each of 25 of the Fernwood Owned Units was not paid.

69. On February 28, 2020, Chaitons responded to Bayshore to advise that the Receiver had sufficient funds to make payment of the \$999 for each unit in respect of common area fees for the months of December, January and February and requested confirmation that no lien had been registered against the units. Bayshore responded that a lien in the amount of \$1,999 had been registered by the Condo. Corp.'s counsel over 25 of the Fernwood Owned Units.

Following a significant number of discussions between counsel to the Receiver and counsel to the Condo. Corp., the Receiver and the Condo. Corp. have agreed to a settlement such that the Receiver is seeking Court authority to pay \$76,807 to the Condo. Corp. in full and final satisfaction of all amounts owed by Fernwood in connection with the condominium liens registered by the Condo. Corp. against Fernwood Owned Units, together with unpaid condominium fees for the months of March to June 2020. The Receiver has obtained a release from the Condo. Corp. that will become effective upon Court approval of the payment of \$76,807 to the Condo. Corp.

Utilities

70. As referred to earlier herein, the accounts for water, hydro and internet for the Development were still in the name of Fernwood as at the date of the Receiver's appointment.
71. In order to ensure no services were interrupted, the Receiver contacted the City of Barrie, Alectra Utilities and Rogers to advise of the receivership and to have accounts opened in the Receiver's name.

72. As the Receiver was receiving limited cooperation from Bayshore and Ness Law, Chaitons requested from Bayshore's paralegal the contact information for the Condo. Corp.'s board members in order that the Receiver could have a direct discussion with them regarding the Development, including the status of claimed common area deficiencies and utilities.
73. On April 8, 2020, Bayshore's paralegal advised that Chaitons' email had been forwarded to Bayshore's general manager of condominium operations (the "**General Manager**"), who would be able to answer the Receiver's questions regarding the Condo. Corp. No communication was received from the General Manager and on April 14, 2020, Chaitons followed up again with Bayshore's paralegal, who provided the General Manager's email address and phone number.
74. A call with two board members of the Condo. Corp. (the "**Board Members**"), the General Manager, Chaitons and the Receiver was arranged for April 17, 2020. During that call, the General Manager advised the Receiver that the costs for hydro, water and internet were the responsibility of each unit owner. The Receiver informed the General Manager that while the main water and hydro accounts were in the name of Fernwood, the individual units were being sub-metered by Priority Submetering Solutions ("**Priority**").
75. The Receiver discussed the utility accounts with the General Manager and the Board Members and requested their assistance to have the accounts changed over to the name of the Condo. Corp. The General Manager requested that the Receiver send to it and the Board Members copies of the agreements between

Fernwood and Rogers regarding internet services (the “**Rogers Agreement**”), and Fernwood and Priority (the “**Priority Agreement**”). The Receiver forwarded copies of the Rogers Agreement and Priority Agreement on April 17, 2020 and April 20, 2020, respectively.

76. The Receiver requested of the General Manager that it provide a copy of the common area deficiency listing submitted by the Condo. Corp. to Tarion and drawings of the Development. To date, this information has not been provided to the Receiver by the General Manager.
77. Based on calls with Priority, Alectra, the City of Barrie and Rogers, the Receiver understands that no one from Bayshore or the Condo. Corp. has contacted them. The Receiver set up calls with the various utility suppliers to apprise them of the current situation and to provide them with the General Manager’s contact information. Since the time of the Receiver’s calls with the various utility suppliers, the Receiver has followed up with them and understands the following:
 - (a) Rogers contacted Bayshore and is in the process of having the internet services agreement between Fernwood and Rogers transferred to the Condo. Corp.;
 - (b) The City of Barrie called and left a message or messages for the General Manager; however, the General Manager did not respond to the City of Barrie. As a result, the City of Barrie has unilaterally changed the main account for water into the Condo. Corp.’s name;