

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

AREACOR INC.

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**

RESPONDING MOTION RECORD

Date: September 26, 2022

RAR LITIGATION LAWYERS
Professional Corporation
1 West Pearce Street, Suite 505
Richmond Hill, Ontario
L4B 3K3

Rocco A. Ruso
LSO No.: 50875I
Tel: 905-731-8100 ext. 207
rocco@rarlitigation.com

Sara Mosadeq
LSO No.: 67864K
Tel: 905-731-8100 ext. 213
sara@rarlitigation.com

Lawyer for the Respondent,
Areacor Inc.

TO: THE ATTACHED SERVICE LIST

SERVICE LIST
(as at September 7)

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: (416) 218-1129 Email: harvey@chaitons.com</p> <p>Sam Rappos Tel: (416) 218-1137 Email: samr@chaitons.com</p> <p><i>Lawyers for MarshallZehr Group Inc. and RSM Canada Limited</i></p>	<p>RAR LITIGATION LAWYERS 1 West Pearce Street, Suite 505 Richmond Hill, ON L4B 3K3</p> <p>Rocco Russo Tel: (905) 731-8100 ext. 207 Email: rocco@rarlitigation.com</p> <p>Sara Mosadeq Tel: (905) 731-8100 ext. 213 Email: sara@rarlitigation.com</p> <p><i>Lawyers for Areacor Inc.</i></p>
<p>RSM CANADA LIMITED 11 King Street West, Suite 700, Box 27 Toronto, ON M5H 4C7</p> <p>Bryan Tannenbaum Tel: (416) 238-5055 Email: bryan.tannenbaum@rsmcanada.com</p> <p>Jeff Berger Tel: (647) 726-0496 Email: jeff.berger@rsmcanada.com</p> <p><i>Court-appointed Receiver</i></p>	<p>LOOPSTRA NIXON LLP 135 Queens Plate Drive #600 Etobicoke, ON M9W 6V7</p> <p>Graham Phoenix Tel: (416) 748-4776 Email: gphoenix@loonix.com</p> <p><i>Lawyers for RSM Canada Limited</i></p>
<p>GLAHOLT BOWLES LLP 800-141 Adelaide Street West Toronto, ON M5H 3L5</p> <p>Brendan Bowles Tel: (416) 368-8280 ext. 221 Email: brendanbowles@glaholt.com</p> <p>John Paul Ventrella Tel: (416) 368-8280 ext. 250 Email: johnpaulventrella@glaholt.com</p> <p><i>Lawyers for Fusioncorp Developments Inc.</i></p>	<p>ROSENSTEINLAW PROFESSIONAL CORPORATION 5255 Yonge Street, Suite 1300 Toronto, ON M2N 6P4</p> <p>Jonathan Rosenstein Tel: (416) 639-2123 Email: jrosenstein@rosensteinlaw.ca</p> <p><i>Lawyer for Aviva Insurance Company of Canada</i></p>

<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower, 22 Adelaide Street West Toronto, ON M5H 4E3</p> <p>James MacLellan Tel: (416) 367-6592 Email : jmaclellan@blg.com</p> <p><i>Lawyers for Aviva Insurance Company of Canada</i></p>	<p>CITY OF HAMILTON Legal and Risk Management Services 71 Main Street West, City Hall Hamilton, ON L8P 4Y5</p> <p>Kaush Parameswaran Tel: (905) 546-2424 ext. 4216 Email: kaush.parameswaran@hamilton.ca</p> <p><i>Lawyers for City of Hamilton</i></p>
<p>KENNALEY CONSTRUCTION LAW Suite 305 – 31 Mechanic Street Paris, ON N3L 1K1</p> <p>Rob Kennaley Tel: (519) 805-8186 E-mail: rjk@kennaley.ca</p> <p><i>Lawyers for Northstar Scaffold (Ontario) Inc.</i></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 Email: aslavens@torys.com</p> <p><i>Lawyers for Tarion</i></p>
<p>SUTHERLAND LAW 3300 Highway No. 7, Suite 904 Vaughan, ON L4K 4M3</p> <p>Rob Moubarak Tel: (905)695-5500 Email: rmoubarak@sutherlaw.com</p> <p>Jonathan Frustaglio Email: jfrustaglio@sutherlaw.com</p> <p><i>Lawyers for Demand Electric Inc.</i></p>	<p>MCBRIDE WALLACE LAURENT & CORD LLP 5464 Dundas Street West, Suite 200 Toronto, ON M9B 1B4</p> <p>Walter Kravchuk Tel: (416) 231-6555 ext. 233 Email: wkravchuk@mwlcclaw.ca</p> <p><i>Lawyers for Earl O'Neil Electric Supply Limited</i></p>
<p>HARRIS, SHEAFFER LLP Yonge Corporate Centre 4100 Yonge Street, Suite 610 Toronto, ON M2P 2B5</p> <p>Gary Harris Tel: (416) 250-2860 Email: gharris@harris-sheaffer.com</p>	<p>DEPARTMENT OF JUSTICE 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Diane Winters Tel: (416) 952-8563 E-mail: Diane.Winters@justice.gc.ca</p> <p><i>Lawyers for Canada Revenue Agency</i></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, 6th floor Oshawa, ON L1H 8H5</p> <p>Leslie Crawford Tel: (905) 433-5657 Email: leslie.crawford@ontario.ca Email: insolvency.unit@ontario.ca</p>	<p>FORD CREDIT CANADA LEASING, DIVISION OF CANADIAN ROAD LEASING COMPANY PO Box 2400 Edmonton, AB T5J 5C7</p>
<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street – Suite 1800 Toronto, ON M5J 2T9</p> <p>Ian Aversa Tel: (416) 865.3082 Email: iaversa@airdberlis.com</p>	<p>Mr. Cahill Unit No. 308</p> <p>Tel: (905) 388-0515 Email: chris@cahillelectric.ca</p>
<p>Mr. and Mrs. Huibers Unit No. 508</p> <p>Tel: (289) 795-6799 Email: ahuibers@clublink.ca</p>	<p>Ms. Holm Unit No. 604 705-65 Annie Craig Dr. Etobicoke, ON M8V 0A8</p> <p>Tel: (416) 660-8870 Email: annahm@hotmail.ca</p>
<p>Mr. Darvey Unit No. 502</p> <p>Tel: (289) 684-1822 Email: brian@michaelstjean.com</p>	<p>Mr. Mccann Unit 602</p> <p>Tel: (431) 777-8540 Email: callummccann@gmail.com</p>
<p>Ms. Stoneman Unit 606</p> <p>Tel: (343) 363-7489 Email: stoneman.carly@gmail.com</p>	<p>Mr. Dawkins Unit 404</p> <p>Tel: (416) 831-5644 Email: cgdawks@hotmail.com</p>

<p>Mr. Dorigiola, Ms. Corstorphine and Ms. Dorigiola Unit 402</p> <p>Tel: (905) 512-1477 Email: ddorigiola@gmail.com</p>	<p>Mr. and Mrs. Knight Unit 206</p> <p>Tel: (416) 569-5115 Email: darius.knight1@gmail.com</p>
<p>Ms. Charalambopoulos Unit 207</p> <p>Tel: (905) 902-8162 Email: fecharala@hotmail.com</p>	<p>Mr. Paetkau Unit 503</p> <p>Tel: (289) 244-4590 Email: paetkauchristian@gmail.com</p>
<p>Mr. and Mrs. Glenn Unit 607</p> <p>Tel: (416) 460-1711 Email: jacqueline@sovereignconsulting.ca</p>	<p>Mr. and Mrs. Soldaat Unit 204</p> <p>Tel: (905) 570-2075 Email: jsoldaat@sympatico.ca</p>
<p>Ms. Bodden and Mr. Alldridge Unit 202</p> <p>Tel: (905) 975-3811 Email: alldridgew@gmail.com</p>	<p>Mr. Pacifici Unit No. 302</p> <p>Tel: (905) 961-3268 Email: mark@pacific-plumbing.com</p>
<p>Mr. Skoko Unit 203</p> <p>Tel: (647) 885-4420 Email: marijavskoko@gmail.com</p>	<p>Mr. Smit Unit 603</p> <p>Tel: (289) 439-7335 Email: matthew.smit@hotmail.com</p>
<p>Mr. D'andrea Unit 501 320-251 Northfield Dr., E Waterloo, ON N2K 0G9</p> <p>Tel: (905) 912-9444 Email: mm2b1dandrea@gmail.com</p>	<p>Ms. Lenawati Unit 601</p> <p>Tel: (289) 828-8900 Email: jadiwinata81@gmail.com</p>
<p>Mr. George Unit 406</p> <p>Tel: (647) 473-3339 Email: ngeorge1@gmail.com</p>	<p>Mr. Huffman Unit 608</p> <p>Tel: (905) 518-4048 Email: paul@talenthunt.ca</p>

<p>Mr. and Mrs. Arnold Unit 408</p> <p>Tel: (905) 541-3647 Email: rickjarnold22@gmail.com</p>	<p>Mr. Bell and Mr. Mancini Unit 304</p> <p>Tel: (905) 409-1722 Email: rbell2288@gmail.com mancini.5.jason@gmail.com</p>
<p>Mr. Moon and Ms. Robinson Unit 305</p> <p>Tel: (905) 928-8462 Email: robb.moon@me.com</p>	<p>Mr. Bethlehem Unit 303</p> <p>Tel: (905) 802-5773 Email: Shanebethlehem@gmail.com</p>
<p>Ms. Farrow Unit 208</p> <p>Tel: (647) 760-6107 Email: sherrifarrow@yahoo.ca</p>	<p>Ms. McGregor Unit 403&306</p> <p>Tel: (905) 961-1470 Email: mcgregorlandscaping@hotmail.com sianmcgregor@hotmail.com</p>
<p>Mr. Hart Unit 605</p> <p>Tel: (905) 407-8850 Email: thart140@gmail.com</p>	

Email Service
List

gphoenix@loonix.com; harvey@chaitons.com; samr@chaitons.com; rocco@rarlitigation.com;
sara@rarlitigation.com; bryan.tannenbaum@rsmcanada.com; jeff.berger@rsmcanada.com;
brendanbowles@glaholt.com; johnpaulventrella@glaholt.com; rosenstein@rosensteinlaw.ca;
jmaclellan@blg.com; kaush.parneswaran@hamilton.ca; rjk@kennaley.ca; aslavens@torys.com;
rmoubarak@sutherlaw.com; jfrustaglio@sutherlaw.com; wkravchuk@mwlcclaw.ca; gharris@harris-sheaffer.com;
Diane.Winters@justice.gc.ca; leslie.crawford@ontario.ca;
insolvency.unit@ontario.ca; iaversa@airdberlis.com; chris@cahillelectric.ca; ahuibers@clublink.ca;
annahm@hotmail.ca; brian@michaelstjean.com; callummccann@gmail.com;
stoneman.carly@gmail.com; cgdawks@hotmail.com; ddorigiola@gmail.com;
darius.knight1@gmail.com; fecharala@hotmail.com; paetkauchristian@gmail.com;
jacqueline@sovereignconsulting.ca; jsoldaat@sympatico.ca; alldridgew@gmail.com;
mark@pacific-plumbing.com; marijavskoko@gmail.com; matthew.smit@hotmail.com;
mm2b1dandrea@gmail.com; jadiwinata81@gmail.com; ngeorge1@gmail.com; paul@talenthunt.ca;
rickjarnold22@gmail.com; rbell2288@gmail.com; mancini.5.jason@gmail.com;
robb.moon@me.com; Shanebethlehem@gmail.com; sherrifarrow@yahoo.ca;
mcgregorlandscaping@hotmail.com; sianmcgregor@hotmail.com; thart140@gmail.com

Court File No.: CV-22-00674747-00CL

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

AREACOR INC.

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**

I N D E X

TAB	DESCRIPTION
1.	Affidavit of Roni Gilyana, sworn September 26, 2022
A.	Email exchange between Ms. Mosadeq and Mr. Phoenix dated September 9, 2022
B.	Email exchange between Ms. Mosadeq and Mr. Berger dated April 24, 2022
C.	Pricelists
D.	Excel spreadsheet setting out the variance in gross revenue

Court File No.: CV-22-00674747-00CL

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

AREACOR INC.

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**

**AFFIDAVIT OF RONI GILYANA
SWORN SEPTEMBER 26, 2022**

I, RONI GILYANA, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the sole officer and director of the Respondent, Areacor Inc. (“Areacor”) and, as such, have knowledge of the matters contained in this affidavit. Where I have been advised by others, I state the source of such information and that I do verily believe it to be true.
2. I make this affidavit, on behalf of Areacor, in response to the Motion Record of the Court Appointed Receiver, RSM Canada Limited (the “Receiver”) returnable October 3, 2022.

BACKGROUND

3. On January 13, 2022, the Receiver was appointed pursuant to the Order of the Honourable Justice Cavangh of all of the assets, undertakings and properties of Areacor.

4. The main asset of Areacor is the real property known municipally as 11-15 Cannon Street West, Hamilton, Ontario (the “Property”).
5. At the time of the appointment of the Receiver, Areacor was developing a 40-unit condominium project on the Property known as the “Jamesville Lofts”. At the time, construction of the super-structure of the condominium building was up to the 5th level pending the last sequence to complete the final three levels, being the 5th floor, the 6th floor, and the 7th floor rooftop level (the “Project”). Areacor had pre-sold 29 of the 40 units in the Project.
6. The Applicant, MarshallZehr Group Inc. (“MarshallZehr”) holds the first position mortgage on the Property securing the loan advances made pursuant to the commitment letter dated May 15, 2018 and the amendments thereto (the “Commitment Letter”).
7. Pursuant to the Commitment Letter, Areacor was required to deliver a progress draw to MarshallZehr’s quantity surveyor, Glynn Group Inc., (the “QS”). The QS would review and issue a funding report to MarshallZehr and following same, MarshallZehr was required to advance funds to Areacor for the particular advance requested.
8. On or about June 8, 2021, Areacor delivered draw request no. 27 to MarshallZehr. MarshallZehr arbitrarily and in breach of the Commitment Letter, refused to make an advance in response to draw request no. 27 and ultimately MarshallZehr refused any further advances under the Commitment Letter.
9. As a result of MarshallZehr refused to advance, Areacor was incapable of delivering payment to its general contractor, FusionCorp Developments Inc., which thereafter ceased work on the Project. Thereafter, MarshallZehr sought the appointment of the Receiver.

THE SALE PROCESS

10. The Receiver has delivered two reports to date: (a) First Report of Receiver, dated September 2, 2022 (the “First Report”) and (b) second Report of Receiver, dated September 8, 2022 (the “Second Report”).

No Appraisal

11. At paragraphs 70 – 88 of the Second Report, the Receiver details the sale process it conducted in respect of the Property.
12. The Receiver elected not to obtain an appraisal of the Property.
13. Ms. Sara Mosadeq, (“Ms. Mosadeq”) counsel for Areacor, inquired with Mr. Graham Phoenix (“Mr. Phoenix”), counsel for the Receiver, in respect of the absence of an appraisal.
14. Mr. Phoenix advised that *“the Receiver determined in this case that an appraisal was not necessary as the market would determine the value”*. Attached hereto and marked as **Exhibit “A”** to this my affidavit is a true copy of the email exchange between Ms. Mosadeq and Mr. Phoenix dated September 9, 2022.
15. It is not clear to me what characteristics of the Property would make it unnecessary to obtain an appraisal.
16. In fact, there are several reasons why the Property requires an appraisal setting out its fair market value such that the Receiver is best equipped to determine the price at which the Property should be sold.
17. The following are specific reasons why the circumstances surrounding the sale of this Property necessitated an appraisal:
 - i. The super-structure on the Property is under construction as such it is impossible to determine the ‘as-built’ value of the structure without a quantitative assessment by a qualified appraiser of the value of the ‘as-built’ structure;
 - ii. It is not clear how the ‘market’ would determine the ‘as-complete’ value of the Property once construction is complete – such value being an important component in determining the fair market value of the Property; and

- iii. Given the current uncertainty in the real estate market and rising interest rates, it is prudent to verify the fair market value of the Property before attempting to list it for sale.
18. Moreover, there is no indication that the Receiver made any attempts to obtain any information regarding the value of the Property before commencing its sale process.
19. The very fact that there is a significant disparity between the purchase prices in the offers received by the Receiver through its bid process and the offer for which it now seeks court approval, indicates that the market does not always determine the value and in fact it did not determine the value of this Property.
20. Therefore, while such a strategy may be an effective marketing tool for perhaps a residential home or an existing commercial building – it is clear that this strategy was not effective in this instance, which ought to have been known to the Receiver.
21. Even eight months after the Receiver was appointed, it still does not have any information to verify the fair market value of the Property it was tasked with selling for the benefit of all creditors of Areacor.

No Listing Brokerage

22. The Receiver elected not to list the Property for sale with a real estate brokerage, but rather it conducted its own marketing and sale process.
23. Ms. Mosadeq inquired with the Receiver, in respect of its election not to list the property with a real estate brokerage. In response, Mr. Jeff Berger (“Mr. Berger”), on behalf of the Receiver, advised that it chose not to do so because it would eliminate commissions payable to the brokerage. Attached hereto and marked as **Exhibit “B”** to this my affidavit is a true copy of the email exchange between Ms. Mosadeq and Mr. Berger dated April 24, 2022.
24. It is not clear to me what expertise the Receiver believed it had superior to the expertise of any reputable real estate brokerage in terms of selling the Property. Moreover, the unique aspects of the Property, which the Receiver was aware of, made it incumbent on the

Receiver to retain a reputable real estate brokerage for the marketing and sale of the Property.

25. All of the offers submitted to the Receiver including the offer the Receiver wishes to accept, will result in a shortfall to MarshallZehr, as the first priority secured creditor.
26. It appears that the Receiver's inability to yield any offers sufficient to satisfy even the indebtedness to MarshallZehr can be attributed to its failure to retain an experienced commercial real estate brokerage to market and sell the Property.

Disclaimer of Existing Purchase Agreements

27. The offer the Receiver is seeking to accept, if approved, will require the disclaimer and/or termination of all 29 agreements of purchase and sale executed by Areacor (the "Existing Purchase Agreements").
28. At paragraph 11 of the Second Report, the Receiver has confirmed that of the \$2,612,468.16 of deposits collected under the Existing Purchase Agreements, \$2,235,921.00 was released to Areacor for use on the Project.
29. Therefore, the offer, if approved, will result in no distribution available to repay the second-place mortgage registered in favour of Aviva Insurance Company of Canada in connection with the Tarion Bond and the deposit insurance facility obtained in connection with the Project.

MarshallZehr and the Proposed Purchaser

30. At paragraph 78 of the Second Report, the Receiver states that MarshallZehr was in discussions with the proposed purchaser. Furthermore, the terms of the agreement of purchase and sale were negotiated by MarshallZehr and counsel for MarshallZehr with 'input' from the Receiver.
31. It is troubling that MarshallZehr negotiated the terms of the agreement of purchase and sale rather than direct the proposed purchaser to contact the Receiver.

32. It is concerning to me that MarshallZehr may have asserted control over the sale process, particularly where the proposed agreement will only result in a minor shortfall to MarshallZehr, who has additional security that it can look to satisfy the shortfall.
33. In short, it appears that the Receiver permitted MarshallZehr to negotiate an offer which offer will be sufficient to satisfy most of MarshallZehr's indebtedness.
34. Moreover, it is important to note that MarshallZehr will continue to finance the construction of the Project with the proposed purchaser, which is contrary to its intention to terminate its relationship with the Project by seeking the appointment of the Receiver.

COMPARABLE DEVELOPMENTS

35. I have conducted research in respect of comparable condominium projects currently selling units. I have located three separate projects:
- i. Television City Phase 2 located at 163 Jackson Street West, Hamilton, Ontario ("Television City Project");
 - ii. Radio City Condos located at 206 King Street West, Hamilton, Ontario ("Radio City Project"); and
 - iii. Apex Condos located at 235 Main Street West, Hamilton, Ontario ("Apex Project").
36. The Project is within 2 kms of each of the Television City Project, Radio City Project and the Apex Project (collectively the "Comparable Projects").
37. The Television City Project consists of a high-rise condominium tower. The Radio City Project is a 14-storey, 122-unit condominium tower. The Apex Project consists of a 23-storey condominium tower.
38. On or about July 13, 2022, I obtained pricelists for each of the Comparable Projects (the "Pricelists"). Attached hereto and marked as **Exhibit "C"** to this my affidavit is a true copy of the Pricelists.

39. Based on the Pricelists, the average cost per square foot for a unit across the Comparable Projects is \$1,000.00-\$1,200.00, with some units listed for sale at more than \$1,200.00 per square foot.
40. The Project was a limited selection of 40 quality boutique micro condo units compared to the Comparable Projects that consist of a large supply of hundreds of conventional condominium tower units.
41. Since the Project is limited in supply, it would be reasonable to expect the Project would garner on the higher end of the average price per foot of \$1,200.00.
42. Whereas the average cost per square foot for the 29 units sold in the Project was \$640.00 per square foot, the remaining 11 units would have been marketed at \$1,200.00 per square foot, had MarshallZehr fulfilled its obligations under the Commitment Letter to advance funds.
43. Based on the previous 29 units sold at \$640.00 per square foot, the remaining 11 units to be sold at \$1,200.00 per square foot, the gross revenue for the Project is estimated to be \$21,608,108.
44. However, if the units are resold at the current market rate of \$1,200.00 per square foot, the proposed purchaser can expect to receive an estimated gross revenue of \$31,589,868.
45. Therefore, the proposed purchaser can expect to see an increased gross revenue of approximately \$9,981,760. Attached hereto and marked as **Exhibit "D"** to this my affidavit, is a true copy of an excel spreadsheet setting out the variance in gross revenue.
46. The significant disparity between the gross revenue for the Project and that which the proposed purchaser can expect to receive indicates that the Property was sold at significantly below market value.

CONCLUSION

- 47. Considering the issues identified in this affidavit, I find it troublesome that the Receiver states at paragraph 86 of the Second Report that “(i) sufficient efforts were made to maximize recoveries, (ii) the length of the marketing process was appropriate, (iii) the marketing process was conducted fairly, (iv) the best outcome was achieved under the circumstances”.
- 48. It is abundantly clear that the Receiver’s actions and/or omissions resulted in an unsuccessful sale process.
- 49. Moreover, given that the foremost task of the Receiver was to sell the Property, which sale was actually negotiated by MarshallZehr, I question what role the Receiver performed in the sale process.
- 50. In light of the foregoing, I respectfully request that the court refuse to approve the proposed offer and direct the Receiver to re-commence the sale process using the diligent efforts expected of a court appointed receiver.

SWORN REMOTELY BY Roni Gilyana of)
 the City of Toronto, in the Province of)
ONTARIO, before me in the Town of **Oakville**)
 in the Province of **ONTARIO** on this 26th day)
 of September, 2022, in accordance with O. Reg.)
 431/20. Administering Oath or Declaration)
 Remotely)

 Commissioner for taking Affidavits, etc.

Sara Masadeh
 6786412.

RONI GILYANA

This is **Exhibit "A"** referred to
in the Affidavit of Roni Gilyana
sworn before me, this the 26th day of September, 2022.



A Commissioner etc.

Sara Mosadeq
LSO No.: 67864K

Sara Mosadeq

From: Graham Phoenix <gphoenix@loonix.com>
Sent: September 9, 2022 11:37 AM
To: Sara Mosadeq
Cc: Amanda Adamo; Danielle Stravato
Subject: Re: Service of Receiver's Report

That is correct. There was no appraisal. The receiver determined in this case that an appraisal was not necessary as the market would determine the value.

R. Graham Phoenix
 LOOPSTRA NIXON LLP
 (o) 416 748 4776
 (m) 416 558 4492
 Sent from my iPhone

On Sep 9, 2022, at 8:23 AM, Sara Mosadeq <Sara@rarlitigation.com> wrote:

Graham,
 I note the Second Report makes no indication as to whether an appraisal of the property was obtained. Is it correct that no appraisal was obtained for the property?



Sara Mosadeq

Lawyer
 T: 905 731 8100 x213
 D: 647 951 9487
 F: 866 751 5134

R A R
LITIGATION

Richmond Hill
 1 West Pearce St., Suite 505
 Richmond Hill, ON L4B 3K3

Oakville
 277 Lakeshore Rd. E., Suite 300
 Oakville, ON L6J 6J3

 [Website](#)  [LinkedIn](#)  [Twitter](#)

This email message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this email to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

From: Graham Phoenix <gphoenix@loonix.com>
Sent: September 8, 2022 2:20 PM
To: Sara Mosadeq <Sara@rarlitigation.com>
Cc: Amanda Adamo <aadam@loonix.com>; Danielle Stravato <danielle@rarlitigation.com>
Subject: RE: Service of Receiver's Report

This is **Exhibit "B"** referred to
in the Affidavit of Roni Gilyana
sworn before me, this the 26th day of September, 2022.



A Commissioner etc.

Sara Mosadeq
LSO No.: 67864K

Sara Mosadeq

From: Berger, Jeff <jeff.berger@rsmcanada.com>
Sent: April 24, 2022 11:07 AM
To: Sara Mosadeq
Cc: Tannenbaum, Bryan; Phoenix, Graham; Danielle Stravato
Subject: RE: Areacor Inc. ats. MarshallZehr Group Inc.

Good morning, Ms. Mosadeq.

Apologies for the delay. Please see the Receiver's comments in red below:

- a. It appears the Receiver is electing not to list the property with a brokerage. Can you please explain why? **The Receiver has an extensive list of industry contacts (developers, investors, brokers, etc.), and has successfully marketed and sold properties in the past without engaging a listing broker. This strategy, if successful, will eliminate commissions on the transaction, to the benefit of the creditors/stakeholders. We also note that the major brokerages (i.e. CBRE, Colliers, Avison Young, etc.) have received notice of the Receiver's sale process, and are welcome to represent prospective purchasers.**
- b. I previously advised the Receiver regarding materials paid for by the Borrower which remains in the possession of various trades. Has the Receiver made any efforts to obtain possession of said materials to include same as part of the sale? **The Receiver has been in contact with these parties, and is in the process of confirming the status of the deposits provided by Areacor Inc. We will provide a further update in due course.**
- c. Please advise whether you have received any offers for the property? **No offers have been received to date. However, the bid deadline is over a month away, and it would be highly unusual for offers to be received by this point in the process. Prospective purchasers have been made aware of the structural deficiencies at the property and are awaiting the results of the consulting and engineering reports that have been requisitioned by the Receiver.**

Please let us know if you have any further questions.

Regards,

Jeffrey Berger, CPA, CA, CIRP, LIT
 Vice-President

RSM Canada Limited

11 King St. W., Suite 700, Box 27, Toronto, Ontario, Canada, M5H 4C7

D: 647.726.0496 **F:** 416.480.2646 | **E:** Jeff.Berger@rsmcanada.com | **W:** www.rsmcanada.com



Waterstone
 CANADA'S
 MOST
 ADMIRABLE
 CORPORATE
 CULTURES
 2020





From: Sara Mosadeq <Sara@rarlitigation.com>
Sent: Thursday, April 21, 2022 11:18 AM
To: Berger, Jeff <jeff.berger@rsmcanada.com>
Cc: Tannenbaum, Bryan <bryan.tannenbaum@rsmcanada.com>; Phoenix, Graham <gphoenix@loonix.com>; Danielle Stravato <danielle@rarlitigation.com>
Subject: RE: Areacor Inc. ats. MarshallZehr Group Inc.

Hi Jeffrey,
 I am following up on my email below. Kindly provide a response.
 Furthermore, please advise whether you have received any offers for the property?

Thanks,



Sara Mosadeq
 Lawyer
 RAR Litigation Lawyers
 1 West Pearce Street, Ste. 505
 Richmond Hill, ON L4B 3K3
 t. 905.731.8100 ext.213
 f. 866.751.5134

This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

From: Sara Mosadeq
Sent: April 8, 2022 3:26 PM
To: Berger, Jeff <jeff.berger@rsmcanada.com>
Cc: Tannenbaum, Bryan <bryan.tannenbaum@rsmcanada.com>; Phoenix, Graham <gphoenix@loonix.com>; Danielle Stravato <danielle@rarlitigation.com>
Subject: RE: Areacor Inc. ats. MarshallZehr Group Inc.

Hi Jeffrey,
 Thank you for your email.
 I have two follow up questions:

- a. It appears the Receiver is electing not to list the property with a brokerage. Can you please explain why?
- b. I previously advised the Receiver regarding materials paid for by the Borrower which remains in the possession of various trades. Has the Receiver made any efforts to obtain possession of said materials to include same as part of the sale?

Regards,



Sara Mosadeq
 Lawyer
 RAR Litigation Lawyers
 1 West Pearce Street, Ste. 505
 Richmond Hill, ON L4B 3K3
 t. 905.731.8100 ext.213
 f. 866.751.5134

This is **Exhibit "C"** referred to
in the Affidavit of Roni Gilyana
sworn before me, this the 26th day of September, 2022.



A Commissioner etc.

Sara Mosadeq
LSO No.: 67864K

TELEVISION CITY

SAMPLE PRICE LIST | PHASE 2

UNIT	BEDROOM	SIZE (SF)	SUITE	ORIENTATION	OUTDOOR SPACE	CURRENT PRICE
2022	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$729,900
208	2BD	758	CHANNEL 08A	SOUTH WEST	TERRACE	\$926,900
1313	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$893,900
1713	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$899,900
520	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$909,650
1220	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$930,150
1720	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$945,150
2120	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$954,150
PENTHOUSE COLLECTION						
3107	2BD	1,394	CHANNEL PH07	SOUTH EAST	BALCONY	\$1,784,900
3205	2BD+DEN	1,447	CHANNEL PH05	NORTH WEST	BALCONY	\$1,862,900
3206	3BD+DEN	1,685	CHANNEL PH06	NORTH EAST	BALCONY	\$2,161,900
3208	3BD	2,010	CHANNEL PH08	SOUTH WEST	BALCONY	\$2,568,900
Maintenance Fees			63.6¢/sq.ft.			
Property Taxes			Estimated at 0.65%			
Occupancy			January 2027			
Deposit Structure			\$10,000 at signing Balance to 5% at 30 days			
Parking			\$69,900 (only available for units 646 sq.ft. or bigger)			
Lockers			\$9,000			



www.televisioncity.ca | 416.368.5262



TELEVISION CITY

SAMPLE PRICE LIST | PHASE 2

UNIT	BEDROOM	SIZE (SF)	SUITE	ORIENTATION	OUTDOOR SPACE	CURRENT PRICE
422	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$693,150
1522	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$706,900
1622	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$708,150
1922	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$711,900
2422	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$718,150
2522	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$719,400
2822	1+DEN	613	CHANNEL 22	WEST	BALCONY	\$723,150
2218	1+DEN	618	CHANNEL 18	SOUTH EAST	BALCONY	\$731,400
2318	1+DEN	618	CHANNEL 18	SOUTH EAST	BALCONY	\$725,900
1612	1+DEN	646	CHANNEL 12	WEST	BALCONY	\$739,150
2212	1+DEN	646	CHANNEL 12	WEST	BALCONY	\$755,400
2712	1+DEN	646	CHANNEL 12	WEST	BALCONY	\$752,900
414	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$848,650
1414	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$866,150
1814	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$873,150
1914	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$874,900
2414	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$883,650
2614	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$887,150
2714	2BD	783	CHANNEL 14	NORTH EAST	BALCONY	\$888,900
413	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$867,150
1213	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$882,900
1313	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$878,400
1413	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$879,650
1713	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$883,400
1913	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$885,900
2913	2BD	802	CHANNEL 13	NORTH WEST	BALCONY	\$898,400
420	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$903,650
520	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$905,400
720	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$908,900
1020	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$914,150
1520	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$922,900
1620	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$924,650
1720	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$926,400
2120	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$933,400
2520	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$940,400
2720	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$943,900
2920	2BD	846	CHANNEL 20	SOUTH WEST	BALCONY	\$947,400
PENTHOUSE COLLECTION						
3207	2BD	1,394	CHANNEL PH07	SOUTH EAST	BALCONY	\$1,799,900
3105	2BD+DEN	1,447	CHANNEL PH05	NORTH WEST	BALCONY	\$1,846,900
3106	3BD+DEN	1,685	CHANNEL PH06	NORTH EAST	BALCONY	\$2,146,900
3208	3BD	2,010	CHANNEL PH08	SOUTH WEST	BALCONY	\$2,568,900
Maintenance Fees	63.6¢/sq.ft.					
Property Taxes	Estimated at 0.65%					
Occupancy	January 2027					
Deposit Structure	\$10,000 at signing Balance to 5% at 30 days					
Parking	\$69,900 (only available for units 646 sq.ft. or bigger)					
Lockers	Lockers wait list is available, please check box on worksheet if interested					



info@urbancondo.ca | 647.259.8806



RADIO ARTS



EXCLUSIVE VIP REGISTRANT PRICE LIST

BUILDING FEATURES

At 14-stories, 122 suites, Radio Arts is an intimate condominium conceptualized by KNYMH Architects that has been designed in the spirit of the past while rising up for a beautiful second act. The four-storey brick podium and arched windows gives a nod to the original 1908 architecture while a black and white tower of glass and artful staggered terraces, balconies and Juliets add a modern contrast to the masonry.

BUILDING AMENITIES

- Retail coffee shop/café on street level.
- Two elevators with 1VALET Elevator Control Integration. (<https://1valet.com/>)
- Fifth Floor Coworking space overlooking King Street featuring seating nooks and an outdoor terrace.
- State-of-the-art Fitness Studio with cardio & weight equipment.
- Private mail and parcel pickup room.
- Social Lounge on the 14th floor featuring a prep kitchen, bar and various lounge zones complemented with a contemporary fireplace and large screen TV.
- "Bookend" Rooftop Terraces on the 14th floor - including a BBQ area and dining seating.
- Dedicated indoor bicycle storage rooms with racks.

SMART COMMUNITY FEATURES

- 1VALET Smart Entry System with Resident App to access building & your suite, high-tech facial recognition and smartphone video calling to verify guests.
- Smart Locks/keyless smart lock integration at suite entry door.
- Smart Parcel Room with package delivery notification on your Resident App.
- Smart air purification technology purifies, cleanses and disinfects indoor air while monitoring the quality in real time.
- CLEAR Hydro-Optic™ UV Water System is a centralized, chemical-free method to treat building water and designed to kill 99.99% of viruses and bacteria, resulting in pharmaceutical grade pure water without the use of chemicals.

SUITE TYPE	SIZE RANGE SQ .FT.	STARTING FROM**
Studio	363 to 493	Mid-\$400's
1 Bedroom	498 to 713	High-\$500's
1 Bedroom + Den	538 to 553	Low-\$600's
2 Bedroom	713 to 894	Mid-\$700's
3 Bedroom	1,020	High-\$800's

TENTATIVE OCCUPANCY DATE July 2, 2025 STACKER PARKING*	DEPOSIT STRUCTURE \$5,000 on Signing Balance to 5% in 30 Days	MAINTENANCE FEES Approx. \$0.64/Sq ft (Excluding Hydro, Water & Gas)
--	--	---

UNIT	TYPE	MODEL	INTERIOR	EXTERIOR	VIEW	PRICE
308	Studio	<u>Soundbite</u>	485 sf	Juliet	North	\$538,990
702	Studio	<u>Broadcast</u>	490 sf	Balcony	South/West	\$548,990
701	Studio	<u>Jockey</u>	493 sf	Balcony	South/East	\$548,990
505	1B	<u>Airwaves</u>	498 sf	Juliet	North	\$576,990
1104	1B	<u>Tuner</u>	502 sf	Juliet	West	\$582,990
1110	1B	<u>Circuit</u>	525 sf	Balcony	East	\$597,990
402	1B	<u>On The Air</u>	546 sf	Juliet	South/West	\$619,990
609	1B	<u>Frequency</u>	540 sf	Balcony	East	\$631,990
1303	1B + D	<u>Network</u>	538 sf	Juliet	West	\$638,990
504	1B	<u>Producer</u>	552 sf	Juliet	North/West	\$641,990
1209	1B + D	<u>Dolby</u>	552 sf	Terrace	East	\$655,990
409	1B	<u>Analog</u>	656 sf	Balcony	North/East	\$679,990
312	1B	<u>Mic Drop</u>	664 sf	Terrace	East	\$678,990
608	1B	<u>Radar</u>	695 sf	Balcony	North/East	\$699,990
204	1B	<u>Digital</u>	713 sf	Juliet	North/West	\$711,990
703	2B	<u>Stereo</u>	713 sf	Juliet	West	\$769,990
301	2B	<u>Hi Fi</u>	894 sf	Juliet	South/East	\$815,990
901	3B	<u>Bandwidth</u>	1020 sf	Balcony x 2	East/South/West	\$910,990

VIP PRICING

Model	Size (Sq. Ft.)	Type	Floors	View	Balcony	Market Price	Launch Price*
AMBITION	414	Junior 1 Bedroom	2-21	E	Yes	\$441,990	\$429,990
BELIEVE	414	Junior 1 Bedroom	2-10	E	Yes	\$441,990	\$429,990
COURAGE	562	1 Bedroom	2-8	S	Yes	\$599,990	\$588,990
DESIRE	562	1 Bedroom + Den	2-21	S	Yes	\$602,990	\$589,990
ENERGY	562	1 Bedroom + Den	9-21	S	Yes	\$602,990	\$589,990
FOCUS	664	2 Bedroom	2-3	N	Yes	\$684,990	\$643,990
GRACEFUL	676	2 Bedroom	3-21	W	Yes	\$690,990	\$646,990
HARMONY	678	2 Bedroom	4-5	NW	Yes	\$693,990	\$652,990
INSPIRE	679	2 Bedroom	4-21	N	Yes	\$694,990	\$652,990
LIVE	679	2 Bedroom	2-21	N	Yes	\$694,990	\$652,990
MOTIVATION	748	2 Bedroom	2-5	N	Yes	\$750,990	\$691,990
OPTIMISM	756	2 Bedroom + Den	3-5	W	Yes	\$758,990	\$693,990
PASSION	756	2 Bedroom	2-3	NW	Yes	\$756,990	\$693,990
RADIANT	796	2 Bedroom + Den	2-21	SE/SW	Yes	\$798,990	\$729,990
SERENITY	800	2 Bedroom	6-21	NE/NW	Yes	\$800,990	\$729,990
TRANQUILITY	846	2 Bedroom	2-5	NE	Yes	\$837,990	\$755,990
VITALITY	928	2 Bedroom	1	E	Yes	\$900,990	\$804,990
WISDOM	971	3 Bedroom	1	SE	Yes	\$940,990	\$839,990

Deposit Structure

\$5,000 on signing
 Balance to 5% in 30 days
 5% in 120 days
 5% in 180 days
 5% in 240 days**

Cheques Payable To

Scarfone Hawkins LLP, In Trust

Closing Adjustments

Jr. 1 Bedroom, 1 Bedroom, 1 Bedroom + Den:
 Capped at \$12,700

2 Bedroom, 2 Bedroom + Den, 3 Bedroom:
 Capped at \$18,000

Maintenance Fees

Approx. \$0.40 / Sq. Ft.
 (In-suite water, hydro & gas separately metered)

Parking - \$64,900***

Maintenance Approx. \$45/month

Locker – INCLUDED

Maintenance Approx. \$20/month

Property Tax Mill Rate

1.209% (2021)****

Floor Premium

\$1,250/floor from 4th Floor

Assignment Allowed


\$2,500 fee*****

Estimated Occupancy

April 30th, 2025

*All pricing is approximate and this document subject to change without notice. May 29th, 2022. **Last deposit cheque cancelled if mortgage pre-approval for 85% of purchase price provided within 10 days of signing (to bring deposit down to 15%). ***Parking spaces initially available to purchase for suites that are 796 sq. ft. & larger. ****Based on a recent MPAC evaluation of a new condominium building in the neighbourhood, property taxes estimated to be \$0.57/sq. ft./month. *****Assignment fee discounted from \$25,000 to \$2,500 for APEX Condos VIPs. Restrictions apply. Refer to Agreement of Purchase and Sale for more details.

This is **Exhibit "D"** referred to
in the Affidavit of Roni Gilyana
sworn before me, this the 26th day of September, 2022.



A Commissioner etc.

Sara Mosadeq
LSO No.: 67864K

A. Areacor Revenue

29 Sold units @ 640	11,410,640
11 Unsold @ 1200	8,703,600
Parking Stalls	468,000
Retail	759,000
Tax Grant	266,868
Total Gross Revenue	21,608,108

B. Revenue w/all units sold @ 1200

40 Unsold 25,080 NSA @ 1200	30,096,000
Parking Stalls	468,000
Retail	759,000
Tax Grant	266,868
Total Gross Revenue	31,589,868

Variance in Gross Revenue (A-B) 9,981,760

MARSHALLZEHR GROUP INC.
Applicant

- and -

AREACOR INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF RONI GILYANA
SWORN SEPTEMBER 26, 2022

RAR LITIGATION LAWYERS

Professional Corporation
1 West Pearce Street, Suite 505
Richmond Hill, Ontario
L4B 3K3

Rocco A. Ruso
LSO No.: 50875I
Tel: 905-731-8100 ext. 207
rocco@rarlitigation.com

Sara Mosadeq
LSO No.: 67864K
Tel: 905-731-8100 ext. 213
sara@rarlitigation.com

Lawyer for the Respondent,
Areacor Inc.

MARSHALLZEHR GROUP INC.
Applicant

-and-

AREACOR INC.
Respondent

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

Proceedings commenced at Toronto

RESPONDING MOTION RECORD

RAR LITIGATION LAWYERS

Professional Corporation
1 West Pearce Street, Suite 505
Richmond Hill, Ontario
L4B 3K3

Rocco A. Ruso
LSO No.: 50875I
Tel: 905-731-8100 ext. 207
rocco@rarlitigation.com

Sara Mosadeq
LSO No.: 67864K
Tel: 905-731-8100 ext. 213
sara@rarlitigation.com

Lawyer for the Respondent,
Areacor Inc.