

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

B E T W E E N :

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C 43, AS AMENDED**

**MOTION RECORD OF THE RECEIVER
(returnable APRIL 1, 2020)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303 / Fax: 416.595.8695

Asim Iqbal LSO#: 61884B
aiqbal@millerthomson.com
Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited in its capacity as
Court-appointed Receiver of 2305992 Ontario Inc.

TO: THE SERVICE LIST

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

B E T W E E N :

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C 43, AS AMENDED**

INDEX

TAB	DOCUMENT
1.	Notice of Motion dated March 16, 2020
2.	Second Report of the Receiver dated March 16, 2020
A.	Receivership Order dated November 28, 2019
B.	Sale Process Approval Order dated January 9, 2020
C.	First Report of the Receiver dated December 30, 2019 (without appendices)
D.	Successful Bid
E.	Back-Up Bid
F.	Discharge Statement
3.	Draft Approval and Vesting Order
4.	Draft Interim Distribution Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

B E T W E E N :

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C 43, AS AMENDED**

**NOTICE OF MOTION
(Returnable April 1, 2020)**

RSM Canada Limited (the “**Receiver**”) in its capacity as Court-appointed Receiver and Manager of the assets, property and undertaking of 2305992 Ontario Inc. (the “**Debtor**”) will make a motion to the Courton Wednesday the 1st day of April, 2020, at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue in Toronto, Ontario.

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

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) An Order approving (the “**Approval and Vesting Order**”):

- (i) a sale transaction (the “**Successful Transaction**”) between the Receiver 2510300 Ontario Inc., which will be assigned to 9750 Yonge Limited (the “**Purchaser**”) and vesting in the Purchaser all of the Debtor’s right, title and interest in the real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario (the “**Property**”); and
 - (ii) a back-up transaction between the Receiver and 2132849 Ontario Inc. or its assignee (the “**Back-Up Bid**”) in the event the Successful Transaction fails to close; and
- (b) An Order (the “**Interim Distribution Order**”):
- (i) approving the activities and conduct of the Receiver described in the Second Report of the Receiver dated March 16, 2020 (the “**Second Report**”)
 - (ii) authorizing the Receiver to make certain interim distributions as described in the Second Report; and
 - (iii) sealing the Confidential Appendices to the Second Report.

THE GROUNDS FOR THE MOTION ARE:

APPROVAL OF TRANSACTIONS

- (a) The Debtor is the registered owner of real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario (the “**Property**”).
- (b) The Property is currently vacant land that the Debtor intended to develop into a mixed use condominium consisting of residential, office and commercial space.
- (c) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 28, 2019 (the “**Receivership Order**”), the Receiver was appointed in respect of the assets, properties and undertakings the Debtor.

- (d) On January 9, 2020, the Court granted an Order (the “**Sale Process Approval Order**”), among other things, approving and authorizing the Receiver to conduct a sale process in accordance with the procedures attached as Schedule “A” to the Sale Process Approval Order (the “**Sale Process**”).
- (e) The Receiver conducted the Sale Process in accordance with the Sale Process Approval Order and as described in the Second Report.
- (f) The Sale Process was robust with over 60 executed confidentiality agreements and 10 offers submitted.
- (g) The final bidders participated in multiple rounds of bidding before a Successful Bid and Back-Up Bid were selected.
- (h) The Back-up Bid was selected in the event the Successful Transaction fails to close to ensure a transaction closes.
- (i) In the Receiver’s view, the Property was adequately exposed to the market and the Successful Bid and Back-Up Bid represent the best offers in the circumstances.

INTERIM DISTRIBUTION

- (j) The Receiver seeks the Court’s approval to distribute the sale proceeds on closing of the Successful Transaction (or the Back-Up Transaction, as the case may be) on account of the following:
 - (i) first, to pay all amounts outstanding that are secured by the Receiver’s Charge (as defined in the Receivership Order);
 - (ii) second, to repay MarshallZehr Group Inc. (“**MZ**”) for amounts outstanding (including principal and interest) that are secured by the Receiver’s Borrowings Charge, being \$250,000 plus accrued interest (as at April 1, 2020);

- (iii) third, amounts outstanding on account of claims that rank in priority to MZ's secured claims (if any); and
 - (iv) fourth, to repay MZ in respect of outstanding principal and accrued interest owing by the Debtor to MZ that is secured under the First Mortgage.
- (k) The Receiver has received an opinion from its independent legal counsel that the personal property and mortgage security held by MZ is valid and enforceable.

APPROVAL OF ACTIVITIES

- (l) The Receiver conducted the activities set out in the Second Report.

SEALING

- (m) The Receiver seeks an order sealing Confidential Appendices 1, 2 and 3 (the "**Confidential Appendices**") to the Second Report. The Confidential Appendices contain commercially sensitive information.
- (n) In the event neither of the transactions closes and the Property needs to be remarketed, the disclosure of the commercially sensitive information contained in the Confidential Appendices could be prejudicial to any future sale process that may be required.

GENERAL

- (o) Rules 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- (p) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
- (q) Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended.
- (r) Such further and 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:

- (s) Second Report of the Receiver dated March 16, 2020 and the appendices and confidential appendices thereto;
- (t) such further and other evidence as counsel may advise and this Honourable Court may permit.

March 16, 2020

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303/Fax: 416.595.8695

Asim Iqbal LSO#: 61884B
aiqbal@millerthomson.com
Tel: 416.595.6008 / Fax: 416.595.8695

Lawyers for RSM Canada Limited in its capacity as
Court-appointed Receiver of 2305992 Ontario Inc.

TO: THE SERVICE LIST

Service List

TO:	<p>MORRISON BROWN SOSNOVITCH LLP 1 Toronto Street, P.O. Box 28 Suite 910 Toronto, ON M5C 2V6</p> <p>Shane Greaves Email: sgreaves@businesslawyers.com</p> <p>David Bleiwas Email: dbleiwas@businesslawyers.com Tel: 416-368-5956</p> <p>Lawyers for the Debtor, 2305992 Ontario Inc.</p>
AND TO:	<p>RSM CANADA LIMITED 11 King St W #700 Toronto, ON M5H 4C7</p> <p>Bryan Tannenbaum Email: bryan.tannenbaum@rsmcanada.com Tel: 416-238-5055</p> <p>Jeff Berger Email: jeff.berger@rsmcanada.com Tel: 647-726-0496</p> <p>Receiver of 2305992 Ontario Inc.</p>
AND TO:	<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON Canada M5H 3S1</p> <p>Kyla Mahar Email: kmahar@millერთhompson.com Tel: 416-597-4303</p> <p>Asim Iqbal Email: aiqbal@millერთhompson.com Tel: 416-597-6008</p> <p>Lawyers for the Receiver</p>
AND TO:	<p>2704553 ONTARIO INC. 21 Roysun Road, Suite 17 Woodbridge ON L4L 8R3</p>

	Mortgagee
AND TO:	BISCEGLIA & ASSOCIATES PROFESSIONAL CORPORATION 9100 Jane Street, Building A, Suite 200 Vaughan ON L4K 0A4 Fernando Souza Email: fsouza@lawtoronto.com Tel: 905-695-3426 Lawyers for Weston Consulting Group Inc.
AND TO:	2132843 ONTARIO INC. Albert Gasparro Email: agasparro@ggroupdevelopment.com Tel: 416-274-6516 Back-Up Purchaser
AND TO:	2510300 ONTARIO INC. C/O JD DEVELOPMENTS 7100 Woodbine Ave., Suite 301 Markham, Ontario L3R 5J2 Julia Zhang/ Maggie Liu Email: Julia.zhang@jddevelopment.ca/ Maggie.ma@jddevelopment.ca Tel: 905-479-9898 Successful Purchaser
AND TO:	ITERATIVE LAW PROFESSIONAL CORPORATION 7 Sonata Cres. Toronto, ON M3B 2C3 Jonathan Ip Email: jonathan@iterativelaw.com Tel: 416-892-4271 FOGLER RUBINOFF LLP 77 King Street West, Suite 3000 TD Centre North Tower Toronto, ON M5K 1G8

	<p>Anthony D. Leibel Email: aleibel@foglers.com Tel: 416-941-8868</p> <p>Lawyers for Successful Purchaser</p>
AND TO:	<p>MINISTRY OF FINANCE Legal Services Br., 33 King Street West, 6th Floor PO Box 627, Stn. A Oshawa, ON L1H 8H5</p> <p>Kevin J. O'Hara Email: kevin.ohara@fin.gov.on.ca Tel: 905-433-6934 Fax: 905-436-4510</p>
AND TO:	<p>DEPARTMENT OF JUSTICE 3400-130 King Street West Tax Section, PO Box 36, Exchange Tower Toronto, ON M5X 1K6</p> <p>Diane H. A. Winters Email: diane.winters@justice.gc.ca Tel: 416-973-3172 Fax: 416-973-0810</p>

sgreaves@businesslawyers.com; dbleiwas@businesslawyers.com;
bryan.tannenbaum@rsmcanada.com; jeff.berger@rsmcanada.com; kmahar@millertomson.com;
aiqbal@millertomson.com; fsouza@lawtoronto.com; agasparro@ggroupdevelopment.com;
Julia.zhang@jddevelopment.ca; Maggie.ma@jddevelopment.ca; aleibel@foglers.com;
jonathan@iterativelaw.com; kevin.ohara@fin.gov.on.ca; diane.winters@justice.gc.ca

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable April 1, 2020)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303/Fax: 416.595.8695

Asim Iqbal LSO# 61884B
aiqbal@millerthomson.com
Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited in its capacity
as Court-appointed Receiver of 2305992 Ontario
Inc.

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

SECOND REPORT OF THE RECEIVER
March 16, 2020

INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 28, 2019 (the “**Receivership Order**”), RSM Canada Limited was appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of 2305992 Ontario Inc. (the “**Debtor**”). A copy of the Receivership Order is attached as **Appendix “A”**.
2. On January 9, 2020, the Court granted an Order (the “**Sale Process Approval Order**”), among other things, approving and authorizing the Receiver to conduct a sale process in accordance with the procedures attached as Schedule “A” to the Sale Process Approval Order (the “**Sale Process**”). A copy of the Sale Process Approval Order, is attached as **Appendix “B”** to this Second Report.

3. In connection with the Sale Process Approval Order, the Receiver filed the First Report of the Receiver dated December 30, 2019 (the “**First Report**”). A copy of the First Report, without appendices, is attached as **Appendix “C”** to this Second Report.
4. The purpose of this report (the “**Second Report**”) is to provide the Court with background and information about:
 - (a) the Receiver’s conduct and activities since the First Report;
 - (b) the results of the Sale Process conducted by the Receiver and the Receiver’s recommendations to the Court with respect to the Successful Transaction and the Back-Up Bid (each as defined below); and
 - (c) certain interim distributions proposed to be made by the Receiver upon closing of a sale transaction for which Court approval is being sought in this Motion.
5. The Receiver brings this motion seeking orders:
 - (a) approving the Successful Transaction and the Back-up Bid in the form of the model approval and vesting order (with necessary modifications) (the “**Approval and Vesting Order**”); and
 - (b) approving the activities and conduct of the Receiver described in this Second Report, authorizing the Receiver to make certain interim distributions as described in this Second Report and sealing the Confidential Appendices to this Second Report (the “**Interim Distribution Order**”).

TERMS OF REFERENCE

6. In preparing this Second 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 this Second 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 of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

7. Unless otherwise stated, all monetary amounts contained in the Second Report are expressed in Canadian dollars.

BACKGROUND

8. The Debtor is an Ontario corporation that has its registered office in Woodbridge, Ontario.
9. The Debtor is the registered owner of real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario (the “**Property**”).
10. The Property is currently vacant land that the Debtor intended to develop into a mixed use condominium consisting of residential, office and commercial space.
11. The Receiver understands that the Debtor had made several attempts to market and sell the Property, both privately and through a broker, during the two years prior to these Receivership proceedings. The Receiver further understands that a number of offers were received by the Debtor, but none of the offers were accepted, or if accepted by the Debtor, no transaction was concluded.

ACTIVITIES OF THE RECEIVER

12. In addition to the activities described in detail in this Second Report, the Receiver has conducted the following activities since the date of the First Report:
 - (a) under the Receiver’s Borrowings Charge, issued a Receiver’s Certificate (each as defined in the Receivership Order) to MarshallZehr Group Inc. (“**MZ**”) to borrow \$250,000 to fund these receivership proceedings, payable on demand with interest calculated and compounded monthly at the rate of five percent (5%) above the bank prime rate;

- (b) conducted the Sale Process in accordance with the Sale Process Approval Order, including making amendments to the Sale Process as necessary or desirable;
- (c) communicated with prospective purchasers;
- (d) communicated with stakeholders, including the first mortgagee and Applicant, MZ, on matters related to the Sale Process and the Property;
- (e) arranged for the renewal of the Debtor's insurance coverage; and
- (f) prepared this Second Report.

SALE PROCESS

13. Pursuant to the Sale Process Approval Order, the Court authorized the Receiver to do all things necessary or desirable to give effect to the Sale Process, including making amendments to the process.
14. In accordance with the Sale Process, the Receiver:
 - (a) posted signage at the Property indicating that it was being sold by the Receiver;
 - (b) prepared: (i) a list of known potential buyers, which included approximately 900 industry contacts and influencers; (ii) a form of confidentiality agreement ("CA") to be executed by prospective purchasers; and (iii) a template Agreement of Purchase and Sale.
 - (c) launched a virtual data room, which provided prospective purchasers with access to information related to the Property;
 - (d) contacted the list of known potential buyers by email on December 27, 2019 and January 13, 2020, enclosing a copy of the teaser letter; and
 - (e) published an advertisement in: (i) the *Globe and Mail* (National Edition) on January 9 and 14, 2020 as well as in certain commercial real estate publications; (ii) the *Sing Tao Daily* newspaper, which is a prominent newspaper in the Chinese

community, on January 11 and 18, 2020; and (iii) in the *Novae Res Urbis*, which is a publication focused on communities in the Greater Toronto and Hamilton Area on January 15, 17, 22 and 24, 2020.

15. The bid deadline was February 13, 2020 (the “**Bid Deadline**”). In response to the Receiver’s marketing efforts, the Receiver received 85 requests for a copy of the CA. Of those 85 requests, the Receiver received 63 executed CAs.
16. All of the prospective purchasers who executed a CA received access to the data room.
17. A total of ten (10) offers were submitted before the Bid Deadline.
18. On February 25, 2020, the Receiver wrote to the three (3) top bidders and provided an opportunity for them to resubmit improved offers by 5:00 p.m. on Thursday, February 27, 2020. Three (3) offers were submitted.
19. Out of the three (3) resubmitted offers, the Receiver determined that the two (2) highest offers were virtually indistinguishable. By email dated March 2, 2020, the Receiver advised the top two (2) bidders that:
 - (a) each bidder would have a final opportunity to re-submit a further improved offer before the Receiver decides which offer to accept; and
 - (b) under Section 25(a) of the Sale Process, the Receiver is authorized to amend the Sale Process as considered necessary or desirable by the Receiver, and accordingly, the Receiver amended the Sale Process to authorize the Receiver to select as the “Back-Up Bid” the non-successful offer of the two (2) final offers received.
20. The Receiver set a deadline of 4:00 p.m. EST on March 3, 2020 for the two (2) top bidders to submit their final offers. Both remaining bidders submitted further revised offers in response to the Receiver’s email.
21. After reviewing the two (2) final offers, the Receiver selected the offer from 2510300 Ontario Inc., which will be assigned to 9750 Yonge Limited (the “**Purchaser**”) as the

successful bid (the “**Successful Bid**”) and selected the offer from 2132849 Ontario Inc. or its assignee (the “**Back-Up Purchaser**”) as the back-up bid (the “**Back-Up Bid**”).

22. In this Second Report, the transaction to be concluded under the Successful Bid from the Purchaser is referred to as the “**Successful Transaction**” and the transaction to be concluded under the Back-Up Bid is referred to as the “**Back-Up Transaction**”.
23. A summary of the offers received in the three rounds of bidding is being filed with the Court as **Confidential Appendix “1”** to this Second Report.
24. The material terms of the both the Successful Transaction and the Back-Up Transaction are summarized as follows:

	Successful Transaction	Back-Up Transaction
Purchased Assets	The Property	
Purchase Price and Deposit	The Receiver is seeking an order of the Court which will allow it to maintain the purchase price and Deposit as confidential until the transaction contemplated under the Successful Transaction or Back-Up Transaction, as applicable, has closed.	
Satisfaction of Purchase Price	Cash	Unless the Back-Up Purchaser elects to pay the Purchase Price in all cash, the Purchase Price will be satisfied, by the Deposit and by the assumption of the Debtor’s indebtedness owing to MZ and secured by the first mortgage in favour of MZ registered against title to the Property.
Closing Date	The closing date is the later of 14 days following the issuance of an approval and vesting order approving the Successful Transaction or March 31, 2020.	The closing date is 5 business days following delivery by the Receiver of a written notice (the “ Transaction Notice ”) to the Back-Up Purchaser confirming, among other things, that the Successful Transaction failed to close and that the Receiver will proceed to consummate the Back-Up

		Transaction and negotiate the Back-Up Bidder's deposit cheque.
--	--	--

25. Redacted copies of the Successful Bid and the Back-Up Bid are attached as **Appendices “D” and “E”**, respectively, to this Second Report. Unredacted copies of the Successful Bid and the Back-Up Bid are being filed with the Court as **Confidential Appendices “2” and “3”**, respectively to this Second Report.
26. The Receiver seeks approval of both the Successful Bid and the Back-Up Bid for efficiency in the event the Successful Transaction fails to close.
27. Based on the Receiver's due diligence to assess the Purchaser's ability to close, the Receiver believes it will be able to consummate the Successful Transaction. However, the Receiver seeks approval of both bids out of an abundance of caution with a view to ensuring that a transaction occurs.
28. The Receiver completed the Sale Process in accordance with the procedures approved by the Court under the Sale Process Approval Order. The Receiver amended the Sale Process as necessary or desirable with a view to maximizing the value of the Property and in accordance with the Sale Process.
29. The Property has been marketed since December 2019 and there were previous attempts by the Debtor to market and sell the Property prior to the commencement of these receivership proceedings.
30. The Sale Process was robust with over 60 executed CAs, and 10 offers submitted.
31. The final bidders participated in multiple rounds of bidding before a Successful Bid and Back-Up Bid were selected.
32. In the Receiver's view, the Property was adequately exposed to the market and the Successful Bid and Back-Up Bid represent the best offers in the circumstances.

33. The first mortgagee, MZ, supports the Successful Transaction and the Back-Up Bid in the event the Successful Transaction fails to close.
34. Accordingly, the Receiver requests that the Court approve the Successful Transaction and the Back-Up Bid.
35. The Receiver seeks an order sealing Confidential Appendices 1, 2 and 3 (the “**Confidential Appendices**”) to this Second Report. The Confidential Appendices contain commercially sensitive information about the bids received and the purchase price obtained for the Property. In the Receiver’s view, this information should remain confidential until such time as either the Successful Transaction or the Back-Up Transaction closes. In the event neither of these transactions close and the Property needs to be remarketed, the disclosure of the commercially sensitive information contained in the Confidential Appendices could be prejudicial to any future sale process that may be required.

INTERIM DISTRIBUTION

36. The Receiver seeks the Court’s approval to distribute the sale proceeds on closing of the Successful Transaction (or the Back-Up Transaction, as the case may be) on account of the following:
 - (a) first, to pay all amounts outstanding that are secured by the Receiver’s Charge (as defined in the Receivership Order);
 - (b) second, to repay MZ for amounts outstanding (including principal and interest) that are secured by the Receiver’s Borrowings Charge, being \$250,000 plus accrued interest;
 - (c) third, amounts outstanding on account of claims that rank in priority to MZ’s secured claims (if any); and
 - (d) fourth, to repay MZ in respect of outstanding principal and accrued interest (excluding fees, costs and “wrap up interest”) owing by the Debtor to MZ that is secured under the First Mortgage.

37. MZ has provided the Receiver with a Discharge Statement as at April 1, 2020, which calculates the MZ Indebtedness to be as follows: principal in the amount of \$19,349,429.01 plus accrued and unpaid interest in the amount of \$7,799,993.60. The *per diem* interest from April 1, 2020 (not including wrap up interest) is \$7,643.89. A copy of the Discharge Statement is attached as **Appendix “F”**.
38. The Receiver has received an opinion from Fogler Rubinoff LLP, its independent legal counsel that, subject to the usual assumptions and qualifications, the First Mortgage and personal property security held by MZ is valid and enforceable.
39. At this time, it is unclear whether there will be sufficient proceeds to repay MZ for the other amounts the Debtor owes it (as set out in the Discharge Statement). This depends on the timing of closing a transaction, the amount of priority claims owing if any and whether the Successful Transaction or the Back-Up Transaction closes.
40. The Receiver intends to return to Court to seek authorization to make a final distribution after the closing of one of the transactions. At that motion, the Receiver also intends to finalize the administration of these receivership proceedings and seek a discharge.

RELIEF REQUESTED

41. Based on the foregoing, the Receiver respectfully requests that the Court grant:
 - (a) the Approval and Vesting Order, and
 - (b) the Interim Distribution Order.

All of which is respectfully submitted to this Court as of this 16th day of March, 2020.

RSM Canada Limited

in its capacity as Court-appointed Receiver and Manager of
2305992 Ontario Inc., and not in its personal or corporate capacity



Per: _____

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

APPENDIX “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE MCEWEN

)
)
)

TUESDAY, THE 28TH
DAY OF NOVEMBER, 2019



MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C 43, AS AMENDED**

ORDER
(Appointing Receiver)

THIS MOTION 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 (“**RSM Canada**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2305992 Ontario Inc. (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 Cecil Hayes sworn October 2, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, and the Respondent, no one

else appearing, although duly served as appears from the affidavit of service of Alina Stoica sworn October 9, 2019 and on reading the consent of RSM Canada to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this 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 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 \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; 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 \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.rsmcanada.com/2305992-ontario-inc>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RETENTION OF LAWYERS

27. **THIS COURT ORDERS** that the Receiver may retain solicitors 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. The Receiver is specifically authorized and permitted to use the solicitors for the Applicant herein as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue with a conflict may arise in respect of the Applicant and the Receiver or a third party, the Receiver shall utilize independent counsel.

GENERAL

28. **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.

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

30. **THIS COURT ORDERS** that the Land Registry Office for the Land Titles Division of York Region (No. 65) shall register this Order against title to the real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario and more particularly described as PIN 03156-0317 (LT) and PIN 03156-0552 (LT) in Land Registry Office No. 65.

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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 28 2019

PER / PAR:



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 2305992 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 20__ (the "**Order**") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 2019.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**RECEIVERSHIP ORDER
(NOVEMBER 28, 2019)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695
kmahar@millerthomson.com

Eduard Popov LSO#: 75657J

epopov@millerthomson.com
Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for the Applicant

APPENDIX “B”

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

THE HONOURABLE JUSTICE

T. McEWEN

)
)
)

THURSDAY, THE 9TH

DAY OF JANUARY, 2020

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent



SALE PROCESS ORDER

THIS MOTION, made by RSM Canada Limited (the “**Receiver**”) in its capacity as Court-appointed receiver and manager of the assets, undertakings and properties of 2305992 Ontario Inc. (the “**Debtor**”), seeking, among other relief, an order approving the sale process substantially in the form set out in Schedule “A” (the “**Sale Process**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver, dated December 30, 2019 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and such other counsel as were present as indicated on the Counsel Slip, no other party appearing although properly served as appears on the Affidavit of Service of Alina Stoica sworn January 6, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion

Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL OF RECEIVER'S ACTIVITIES

2. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Receiver set out therein are approved.

APPROVAL OF SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process is approved.

4. **THIS COURT ORDERS** that the Receiver is authorized and directed to carry out the Sale Process and do all such things as are necessary and desirable to conduct and give effect to the Sale Process, and to carry out its obligations therein.

5. **THIS COURT ORDERS** that the Receiver and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Sale Process as determined by this Court.



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

JAN 09 2020

PER / PAR 

SCHEDULE "A"

SALE PROCESS AND BIDDING PROCEDURES

For 9740, 9750, 9760 Yonge Street, Richmond Hill, Ontario

Overview

1. On November 28, 2019, on the application of MarshallZehr Group Inc., the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an Order (the "**Receivership Order**"), among other things, appointing RSM Canada Limited ("**RSM**" or the "**Receiver**") as receiver and manager of the assets, undertakings and properties of 2305992 Ontario Inc. (the "**Debtor**").
2. On January 9, 2020, the Court granted an order (the "**Sales Process Order**") approving, authorizing and directing the Receiver to carry out a process (the "**Sale Process**") to market for sale the Debtor's right, title and interest, if any, in the Property (as defined below) in accordance with the bidding procedures set out in this document (the "**Bidding Procedures**").

Property to Be Sold and Terms of Sale

3. The property for sale is the Debtor's right, title and interest in the vacant land municipally known as 9740, 9750, 9760 Yonge Street, Richmond Hill, Ontario and legally described in the following parcel registers: 03156-0317 (LT) and 03156-0552 (LT) (together with any permits or plans, the "**Property**").
4. The sale of the Property pursuant to this Sale Process shall be on an "as is, where is" basis subject to whatever defects, conditions, title deficiencies, impediments, hazardous materials or deficiencies which may exist, and without representations or warranties of any kind, nature, or description by the Receiver or its directors, officers, employees, representatives or agents except to the extent set forth in the agreement of purchase and sale to be entered into between the Receiver and the successful bidder. By submitting a Binding Offer (as defined below), each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Binding Offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents, permits, plans or the Property in making its Binding Offer, and that it did not, and does not, rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated herein or as set forth in a Successful Bid (as defined below) approved by the Court.
5. Subject to an Approval and Vesting Order being issued by the Court, all of the right, title and interest of the Receiver and the Debtor in and to the Property, if any, will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests of any kind thereon (collectively, the "**Claims**") and such Claims shall attach

to the net proceeds of sale (without prejudice to any claims or entitlements regarding priority, validity and enforceability), except to the extent otherwise expressly set forth in the Approval and Vesting Order.

Conduct of the Sale Process

6. The procedures set out herein shall exclusively govern the process for soliciting and selecting bids for the sale of the Property, subject at all times to the discretion of the Receiver to make such amendments as may be advisable and may be authorized hereunder or by further Order of the Court.

Timeline

7. The following table sets out the key milestones under the Sale Process:

Milestone	Deadline
Sale Process Commencement Date:	December 27, 2019
Bid Deadline	February 13, 2020 at Noon (EST)
Closing Date (on or before)	March 31, 2020

8. Subject to the terms contained herein, the dates set out in the Sale Process may be extended by the Receiver, in its sole discretion acting reasonably, with a view to maximizing the value of the Property. If the Bid Deadline is extended, the Receiver shall notify all Potential Bidders (as defined herein).

Identification of Potential Interested Parties

9. The Receiver has prepared a list of potential bidders (the “**Known Potential Bidders**”) who may have interest in making an offer to purchase the Property (a “**Transaction**”) and sent such parties a letter summarizing the opportunity (the “**Teaser Letter**”). The Known Potential Bidders include certain parties that participated in the sale process conducted by the Debtor prior to the issuance of the Receivership Order.
10. Any interested party may obtain a copy of the Teaser Letter by contacting the Receiver.

Solicitation

11. Any person interested in obtaining additional information on the Property and making a bid to the Receiver for the Property, shall sign a confidentiality agreement in a form acceptable to the Receiver (the “**Confidentiality Agreement**”).

12. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and additional information, should contact the following representative of the Receiver: Jeffrey Berger at: "jeff.berger@rsmcanada.com".
13. Interested parties that have executed and returned a Confidentiality Agreement to the Receiver (each, a "**Potential Bidder**") will be provided with: (i) a copy of the confidential information memorandum (the "**CIM**"), (ii) access to an electronic data room containing information related to the Property (the "**Data Room**"), and (iii) access to such further materials that the Receiver may obtain in respect of the Property.
14. The Receiver has prepared and included in the Data Room a form of agreement of purchase and sale on which offers for the Property must be submitted (the "**Template APS**").

Binding Offers

15. Each Bidder shall have **until 12:00 noon (EST) on February 13, 2020** (the "**Bid Deadline**"), to submit to the Receiver binding offers for the purchase of the Property on the Template APS (a "**Binding Offer**"), and each Bidder shall submit with the Binding Offer a blackline to the Template APS reflecting any proposed changes to the Template APS. Each Potential Bidder that submits a Binding Offer is hereafter referred to a "**Bidder**".
16. A Binding Offer shall be an offer for all of the Property and, without limitation, shall:
 - (a) be accompanied by a cash deposit by certified cheque or by wire transfer of immediately available funds (wire transfer instructions will be provided upon request) in an amount equal to 10% of the offered purchase price (the "**Deposit**");
 - (b) clearly identify the potential purchaser and sponsoring entities (including any beneficial holders) by name and confirm that corporate and any and all other required authorizations have been obtained to enter into the transaction contemplated by such Binding Offer;
 - (c) be submitted on the Template APS and include a blackline against the Template APS highlighting any changes made;
 - (d) not be conditional upon financing and shall include proof satisfactory to the Receiver in its sole discretion of the Bidder's financial ability to close a transaction on the terms of its Binding Offer;
 - (e) in the Receiver's opinion, not include any material conditions to closing;
 - (f) include such other documents or evidence as may be reasonably requested by the Receiver; and
 - (g) not request or entitle the Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment.

17. All Binding Offers shall be sealed, marked "Offer – 2305992 Ontario Inc.", and delivered by hand, mail postage prepaid or by email to the Receiver at RSM Canada Limited, 11 King Street West, Suite 700, PO Box 27, Toronto, Ontario M5H 4C7, attention: Mr. Jeffrey Berger (jeff.berger@rsmcanada.com). All Binding Offers must be capable of acceptance and must be irrevocable until **11:59 pm EST on** February 21, 2020, and shall be subject to Court approval. The Receiver may in its discretion seek clarifications with respect to any of the Binding Offers received and may grant extensions.
18. Each Binding Offer shall be considered by the Receiver in its sole discretion. No Bidder shall be entitled to be present for the opening of offers. The Receiver is not required to accept the highest or any Binding Offer.
19. The Receiver may:
 - (a) negotiate with any Bidder with respect to any provision of such Bidder's Binding Offer;
 - (b) request or agree to any changes in any Binding Offer;
 - (c) in the Receiver's discretion, request some or all Bidders to submit revised Binding Offers reflecting improved terms. The Receiver has no obligation to negotiate identical terms with, or extend identical terms to, each Bidder;
 - (d) take such steps as the Receiver considers necessary or desirable to maximize the value realized for the Property; or
 - (e) in the Receiver's discretion, select a Binding Offer (such selected offer being the "**Successful Bid**") and seek Court approval of the Successful Bid.
20. The Receiver intends to notify the Bidder with the Successful Bid (the "**Successful Bidder**") that it is the Successful Bidder on or before 5:00 p.m. EST on February 24, 2020 or such later date as may be determined by the Receiver.
21. Deposits of all Bidders shall be held in a non-interest bearing account of the Receiver. The Receiver shall return the Deposits held by it, other than the Deposit from the Successful Bidder, by registered mail addressed to the Bidder at the address set out in its Binding Offer or made available for pickup not later than eighteen (18) days following notification to the Bidder that its bid was not accepted by the Receiver. Upon closing of a transaction with the Successful Bidder, all Binding Offers of other Bidders that are not the Successful Bidder shall be deemed to be rejected.

Approval Motion for Successful Bid

22. The Receiver shall take such steps as may be necessary to facilitate the closing of the Successful Bid as soon as practical, including, without limitation, applying to the Court (the "**Approval Motion**") for an Approval and Vesting Order approving the Successful Bid and authorizing the Receiver to complete the transactions contemplated by the Successful Bid.

23. Closing of the Successful Bid shall be completed as soon as possible, but in any event on or before March 31, 2020, unless otherwise agreed to by the Receiver in its sole discretion.
24. If the Successful Bidder fails to complete the transaction contemplated by the Successful Bid for any reason other than a failure to perform on the part of the Receiver, the Receiver shall be entitled to retain the Deposit of the Successful Bidder as part of the Receiver's damages resulting from the non-completion of such transaction.

Miscellaneous

25. The Receiver may, in its sole discretion:
 - (a) amend this Sale Process, including the right to extend, abridge or otherwise amend any timelines described herein as considered necessary or desirable by the Receiver or by further order of the Court;
 - (b) reject, at any time, any bid that is inadequate or insufficient, not in conformity with these Bidding Procedures or any other orders made in these Receivership proceedings, or is contrary to the best interests of the Debtor and its stakeholders as determined solely by the Receiver;
 - (c) impose additional terms, conditions or requirements and otherwise modify the Sale Process or these Bidding Procedures;
 - (d) accept bids not in conformity with these Bidding Procedures to the extent that the Receiver determines that doing so would maximize the value of the Property; and
 - (e) reject any or all bids or offers including the highest and/or best bid in respect of the Property.
26. This Sale Process does not, and shall not be interpreted to, create any contractual or other legal relationship between any Potential Bidder, Bidder and the Debtor, the Receiver or any of their respective directors, officers, employees, agents, representatives, estates, advisors or professionals, other than as expressly set forth in definitive agreement(s) signed by the Receiver.
27. At any time during this Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

SALE PROCESS ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla E.M. Mahar (LSO# 44182G)

kmahar@millerthomson.com

Asim Iqbal (LSO# 61884B)

aiqbal@millerthomson.com

Eduard Popov (LSO# 75657J)

epopov@millerthomson.com

Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited, in its capacity
as Court-appointed Receiver of 2305992 Ontario
Inc.

APPENDIX “C”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

FIRST REPORT OF THE RECEIVER
December 30, 2019

INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 28, 2019 (the “**Receivership Order**”), RSM Canada Limited was appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of 2305992 Ontario Inc. (the “**Debtor**”).
2. The purpose of this report (the “**First Report**”) is to provide the Court with background and information about:
 - (a) the Receiver’s conduct and activities since issuance of the Receivership Order and seek the Court’s approval thereof; and
 - (b) the Receiver’s comments and recommendations regarding the sale process being carried out by the Receiver (the “**Sale Process**”), for which the Receiver seeks an Order, among other things, approving the Sale Process.

3. The Receiver seeks approval of the Sale Process at this time to, among other things, give the Debtor and those parties on the Service List an opportunity to review the Sale Process and provide their comments to the Receiver or to make submissions to the Court.

TERMS OF REFERENCE

4. 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 this 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 of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
5. Unless otherwise stated, all monetary amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

6. The Debtor is an Ontario corporation that has its registered office in Woodbridge, Ontario.
7. The Debtor is the registered owner of real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario (the “**Property**”).
8. The Property is currently vacant land that the Debtor intended to develop into a mixed use condominium consisting of residential, office and commercial space.
9. The Receiver understands that the Debtor had made several attempts to market and sell the Property, both privately and through a broker, during the two years prior to these Receivership proceedings. The Receiver further understands that a number of offers were received by the Debtor, but none of the offers were accepted, or if accepted by the Debtor, no transaction was concluded.

THE RECEIVER'S ACTIVITIES

10. Since the issuance of the Receivership Order, the Receiver has conducted the following activities:
 - (a) took possession of the Property and registered a copy of the Receivership Order against title to the Property;
 - (b) issued the notices required pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) to known creditors of the Debtor;
 - (c) arranged for insurance coverage in respect of the Property;
 - (d) established a website for these Receivership proceedings:

<<https://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/2305992-ontario-inc.html>>;
 - (e) prepared the forms of CA, CIM, Teaser Letter, Bidding Procedures and Template APS (each as defined below) in connection with the Sale Process;
 - (f) prepared a data room to be used in connection with the Sale Process (the “**Data Room**”);
 - (g) administered certain aspects of the Sale Process as described below; and
 - (h) prepared this First Report.

SALE PROCESS

11. The Receivership Order, among other things, authorizes the Receiver to market and sell the Property.
12. The Receiver has developed a Sale Process for which it seeks the Court's approval. A copy of the Sale Process including bidding procedures governing the Sale Process (the “**Bidding Procedures**”) is attached to this First Report as **Appendix “A”**.

13. The Receiver has commenced certain activities in connection with the Sale Process in accordance with the Bidding Procedures, namely, the Receiver has prepared:
- (a) a list of approximately 900 parties who may have an interest in submitting an offer for the Property. The parties on this list will be sent by email a teaser letter (the “**Teaser Letter**”) on two separate occasions commencing on December 27, 2019. A copy of the Teaser Letter is attached as **Appendix “B”** to this First Report;
 - (b) a draft form of advertisement that will be published on two separate occasions in the *Globe and Mail* (National Edition). A copy of the draft form of advertisement is attached as **Appendix “C”** to this First Report; and
 - (c) the form of confidentiality agreement (“**CA**”) to be provided to parties requesting additional information from the Receiver with respect to the Property, which CA is to be signed and returned to the Receiver;
 - (d) a confidential information memorandum (“**CIM**”) to be provided to parties that execute a CA; and
 - (e) the form of agreement of purchase and sale (the “**Template APS**”) to be included in the Data Room, and on which offers for the Property are to be submitted. A copy of the Template APS is attached as **Appendix “D”** to this First Report.
14. A summary of the Bidding Procedures is as follows:¹
- (a) interested parties who execute a CA will receive a copy of the CIM, along with access to the Data Room;
 - (b) the deadline to submit offers is 12:00 noon (EST) on Thursday, February 13, 2020; and

¹ Capitalized terms not otherwise defined in this section are used as defined in the Bidding Procedures.

- (c) the Receiver will review submitted offers. The Receiver may: (i) negotiate with bidders, (ii) request or agree to changes in any offer, or (iii) request from some or all of the bidders that they submit revised offers reflecting improved terms;
 - (d) the Receiver will select a successful bid (the “**Successful Bid**”) and seek the Court’s approval of the Successful Bid as soon as reasonably practical. Pursuant to the Sale Process the Receiver is not required to select the highest or best bid received.
15. Bidders will also be advised that, unless otherwise agreed to by the Receiver:
- (a) offers are to be accompanied by a cash deposit by certified cheque or wire transfer of immediately available funds in an amount equal to ten percent (10%) of the offered purchase price;
 - (b) the projected closing date is proposed to be no later than March 31, 2020;
 - (c) offers are to be submitted on the Template APS with a blackline highlighting any changes made; and
 - (d) offers are not to be conditional on financing and shall include satisfactory proof of the bidder’s financial ability to complete the transaction.
16. In the Receiver’s view, the Sale Process is commercially reasonable in the circumstances and allows for sufficient time for the Property to be exposed to the market in order to maximize the value of the Property. The Sale Process and Bidding Procedures are supported by the Debtor’s senior secured creditor, MarshallZehr Group Inc.

CONCLUSIONS AND RECOMMENDATIONS

17. Based on the foregoing, the Receiver respectfully requests that the Court make an order approving:
- a) the First Report and the Receiver’s activities set out herein; and
 - b) the Sales Process.

All of which is respectfully submitted to this Court as of this 30th day of December, 2019.

RSM Canada Limited

in its capacity as Court-appointed Receiver and Manager of
2305992 Ontario Inc., and not in its personal or corporate capacity

Per:

A handwritten signature in black ink, appearing to read 'B. A. Tannenbaum', with a long horizontal flourish extending to the right.

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

APPENDIX “D”

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the 3rd day of March, 2020.

BETWEEN:

RSM CANADA LIMITED,

in its capacity as Court-Appointed Receiver and Manager of the assets, undertakings and properties of **2305992 ONTARIO INC.** (the "Debtor") and not in its personal or corporate capacity

(the "Vendor")

and

2510300 ONTARIO INC. (an affiliate of JD Development)

(the "Purchaser")

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated November 28, 2019, (the "Appointment Order") RSM Canada Limited was appointed as receiver and manager 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 and including the real property described in Schedule "A" of the Appointment Order (the "Property").
- B. The Vendor desires to sell and the Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties covenant and agree as follows:

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) "**Acceptance Date**" means the date that this Agreement is executed by the Parties;
- (b) "**Agreement**" means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

- (c) "**Applicable Laws**" means, with respect to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (d) "**Approval and Vesting Order**" means an order or orders made by the Court approving the Transaction (and the Back Up Bid) and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances (except the Permitted Encumbrances) in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably. For greater certainty, the vesting portion of the "Approval and Vesting Order" shall be substantially in the form of the model approval and vesting order approved by the "Ontario Commercial List Users Committee";
- (e) "**Assumed Liabilities**" has the meaning ascribed to it in Section 2.9;
- (f) "**Back Up Bid**" means the offer to purchase the Property submitted by a prospective purchaser that was selected by the Vendor as the bid that will become the Successful Bid, in accordance with the Sale Process, in the event the Transaction fails to close on or before the Outside Date;
- (g) "**Business Day**" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (h) "**CIM**" means the confidential information memorandum prepared by the Vendor;
- (i) "**Claim**" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (j) "**Closing**" means the successful completion of the Transaction;
- (k) "**Closing Date**" means the date upon which Closing occurs, provided that such date shall be no later than the Outside Date;
- (l) "**Collateral Security**" has the meaning ascribed to it in Section 2.13;
- (m) "**Deposit**" has the meaning ascribed to it in Section 2.5;
- (n) "**Encumbrance**" means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
- (o) "**Environmental Condition**" has the meaning ascribed to it in Section 2.2(a);
- (p) "**Environmental Laws**" means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing,

transportation, treatment, release and disposal of Hazardous Materials;

- (q) **Ereg**" has the meaning ascribed to it in Section 5.7;
- (r) **"ETA"** means the *Excise Tax Act* (Canada);
- (s) **"Government Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, court, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;
- (t) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;
- (u) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (v) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;
- (w) **"Letters of Credit"** means any letters of credit issued on behalf of the Debtor in respect of the Property;
- (x) **"Liabilities"** means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes.
- (y) **"Outside Date"** means date that is the later of (i) the day that is 14 days following the issuance of the Approval and Vesting Order, and (ii) March 31, 2020;
- (z) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. **"Party"** means any one of the foregoing;
- (aa) **"Permits"** means all permits, licenses and applications in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;
- (bb) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto and in Schedule "D" to the Approval and Vesting Order;

- (cc) "**Person**" means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (dd) "**Plans**" means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, the engineering drawings, architectural plans and working drawings, landscaping plans, other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the data room created by the Vendor in respect of the Transaction;
- (ee) "**Purchaser Closing Conditions**" has the meaning ascribed to it in Section 4.1;
- (ff) "**Purchase Price**" shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Taxes and any other taxes payable as a result of or in connection with the Transaction;
- (gg) "**Purchased Assets**" means, collectively, the right, title and interest of the Debtor in and to the Property, the Permits and the Plans;
- (hh) "**Sale Process**" means the sale process approved by the Court and administered by the Vendor to market and sell the Property, as amended by the Vendor on March 2, 2020 in accordance with the Sale Process Order;
- (ii) "**Sale Process Order**" means the Order of the Court dated January 9, 2020, among other things, approving the Sale Process;
- (jj) "**Successful Bid**" and "**Successful Bidder**" have the meanings ascribed to such terms in the Sale Process;
- (kk) "**Transaction**" means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (ll) "**Taxes**" means all HST, Land Transfer Tax, charges, fees, levies, imposts and other assessments, including all sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto; and
- (mm) "**Vendor Closing Conditions**" has the meaning ascribed to it in Section 4.3.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including"

means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

The following Schedules are incorporated in and form part of this Agreement;

- Schedule "A" Purchased Assets
- Schedule "B" Permitted Encumbrances

SECTION 2 — SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets. The Purchaser further acknowledges that the Purchased Assets do not include any interest in the Letters of Credit, in respect of which, the provisions of Section 2.13 hereof shall govern.

2.2 "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning, permitted uses, permits, compliance with Applicable Laws of Governmental Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets contained in this Agreement are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that all written and oral information (including, analyses, financial information and projections, compilations and studies) obtained by the Purchaser from the Vendor or any agent of the Vendor (including, any information contained in any of the Plans and the CIM) with respect to the Purchased Assets or otherwise relating to the Transaction has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.
- (b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authority and the Purchaser shall accept

the title to the Property subject to the Permitted Encumbrances.

- (c) the various parties who prepared the Plans may have restricted the use thereof by the Debtor only, in their respective retainers with the Debtor and any purported conveyance of the Plans by the Vendor to the Purchaser may be subject to such limitations.

2.3 Permitted Encumbrances

The Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge such Permitted Encumbrances on Closing or thereafter.

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be an amount of [REDACTED]

2.5 Deposit

The Parties acknowledge and agree that the sum of [REDACTED] (the "Deposit") has been delivered by the Purchaser to the Vendor upon submission by the Purchaser of an executed copy of the Agreement to the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

- (a) if Closing has occurred on or before the Outside Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) if Closing has not occurred by the Outside Date for any reason other than the default of the Purchaser hereunder, then the Deposit shall be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or
- (c) if Closing has not occurred by the Outside Date as a result of the Purchaser's default hereunder (including for failing to satisfy a Vendor Closing Condition that is not waived by the Vendor), then the Vendor shall be entitled to declare by written notice to the Purchaser (a "Deposit Declaration") that the Deposit be paid to the Vendor without prejudice to the Vendor's rights to claim damages, losses, costs and expenses incurred by the Vendor as a result of such failure. If the Vendor makes a Deposit Declaration in accordance with this paragraph, the Deposit shall be released from trust and paid to the Vendor without prejudice to the Vendor's rights to claim damages, losses, costs and expenses incurred by the Vendor as a result of such failure.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

- (a) at the Closing, the Deposit shall be paid in immediately available funds to the Vendor and credited against the Purchase Price in accordance with Section 2.5(a); and
- (b) at the Closing, the Purchase Price minus the amount paid to the Vendor pursuant to Section 2.6(a), shall be paid to the Vendor or as the Vendor may direct in writing.

2.7 Allocation of Purchase Price

The entire Purchase Price shall be allocated to the Property (as opposed to any other item forming part of the Purchased Assets, to the extent applicable) and the Parties shall ensure that the Purchaser and the Vendor shall follow such allocation in determining and reporting their liabilities for any Taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocation, provided that nothing herein shall require the Vendor to file any income tax returns that it is not otherwise required to file.

2.8 Excluded Liabilities

Other than the Assumed Liabilities, the Purchaser shall not assume and shall not be liable for any other Liabilities of the Vendor or the Debtor.

2.9 Assumed Liabilities

From and after Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

- (a) Permitted Encumbrances;
- (b) from the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and
- (c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

(the foregoing being the "Assumed Liabilities").

2.10 Taxes

In addition to the Purchase Price, the Purchaser shall pay all applicable Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, HST and Land Transfer Tax.

The Purchaser will be a HST registrant under the ETA on or before the Closing Date and will provide its registration number to the Vendor on or before the Closing Date.

If part or all of the Transaction is subject to HST and:

- (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the ETA; and/or
- (ii) the Purchaser is a "prescribed recipient" under the ETA and/or is registered under the ETA,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the ETA or, if no such form is prescribed, then in reasonable form, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Governmental Authority all HST payable in respect of the Transaction. If sub-paragraph (a)(ii) above is applicable, then the Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration as the

case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Transaction.

The Purchaser hereby indemnifies and holds the Vendor harmless from and against any liability for Taxes, including HST and Land Transfer Tax, arising out of any failure to pay such taxes as and when due, together with all interest, penalties and expenses resulting from such failure.

2.11 Inspections

The Vendor will permit the Purchaser, its consultants, agents and representatives to carry out, at the Purchaser's sole expense and risk, such tests and investigations (including structural and physical tests, soil tests and environmental audits) and inspections as the Purchaser, acting reasonably, may deem necessary with respect to the Property, subject to and conditional upon the following terms and conditions:

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Purchaser shall provide at least two (2) Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;
- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and
- (e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.

The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.11 by the Purchaser. To the extent that the Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.12 [Intentionally Deleted]

2.13 Letters of Credit

The Purchaser covenants and agrees that on Closing, it shall be required to substitute the Letters of Credit with replacement letters of credit of its own such that the Letters of Credit shall be released and returned for cancellation. In addition to the foregoing, to the extent that the Letters of Credit are collaterally secured, whether by a cash account or otherwise (the "**Collateral Security**"), the Purchaser shall further be required on Closing to replace the Collateral Security as may be necessary to release and return same to the Vendor or as it may otherwise direct. The

Purchaser shall be solely responsible for payment of all costs and expenses attributable to the performance of the foregoing obligations.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

The Purchaser covenants and agrees that it will effective on and after the Closing Date, assume and be fully responsible for:

- (a) all obligations which are to be observed or performed from and after completion of this Transaction under the Permitted Encumbrances; and
- (b) any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement.

3.2 Purchaser's Representations

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the Transaction has been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of any of its obligations hereunder;
- (d) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;
- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly

executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;

- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*; and
- (h) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Vendor's Representations

The Vendor represents and warrants to the Purchaser as follows:

- (a) the Vendor has been duly appointed as the receiver and manager of the Purchased Assets pursuant to the Appointment Order and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and
- (b) the Vendor is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act (Canada)*.

3.4 Survival of Representations and Warranties

The representations and warranties contained in Section 3.2 and Section 3.3 hereof or any other agreement, certificate or instrument delivered by a party to the other party pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the other party, for a period of twelve (12) months from the Closing Date, after which time the parties shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by a party to the other in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

SECTION 4 — CONDITIONS

4.1 Purchaser Closing Conditions

The obligation of the Purchaser to complete the Transaction is subject to the following conditions precedent being fulfilled or performed at or prior to the Closing Date (the "**Purchaser Closing Conditions**"):

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement; and

- (c) the Approval and Vesting Order shall not have been stayed, varied or set aside.

The Purchaser Closing Conditions are for the exclusive benefit of the Purchaser. Any Purchaser Closing Condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

4.2 Purchaser Closing Conditions Not Fulfilled

If any Purchaser Closing Condition has not been fulfilled at or prior to the Closing Date, then the Purchaser in its sole discretion may, either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser in accordance with the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Purchaser Closing Condition.

4.3 Vendor Closing Conditions

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date (the "**Vendor Closing Conditions**"):

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement; and
- (c) there shall be no litigation or proceedings pending against any of the Parties hereto, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.

The Vendor Closing Conditions are for the exclusive benefit of the Vendor. Any Vendor Closing Condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing.

4.4 Vendor Closing Conditions Not Fulfilled

If any Vendor Closing Condition shall not have been fulfilled at or prior to the Closing Date, then the Vendor in its sole discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and the Vendor shall be entitled to retain the Deposit in accordance with the provisions of Section 2.5(c);

- (b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual condition that the Approval and Vesting Order shall have been granted by the Court on or before March 31, 2020 approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Purchaser is not in default of its obligations hereunder, the Deposit shall be promptly returned to the Purchaser in accordance with the provisions of Section 2.5 hereof.

SECTION 5 — CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date or as otherwise determined by mutual agreement of the Parties in writing, *provided that* the Closing Date shall occur no later than the Outside Date.

5.2. Purchaser's Deliveries on Closing

On or before the Closing Date, the Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price;
- (b) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (c) an acknowledgement dated as of the Closing Date, that each of the Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) an assignment of the Purchased Assets and assumption of the Assumed Liabilities executed by the Purchaser and the Vendor;
- (e) the certificate and indemnity provided for under Section 2.10;
- (f) evidence satisfactory to the Vendor, acting reasonably, that the Letters of Credit and Collateral Security have been released and returned, as applicable, in accordance with the provisions of Section 2.13;

- (g) an undertaking to re-adjust any item on or omitted from the statement of adjustments; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

On or before the Closing Date, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order(s) and the receiver's certificate relating thereto;
- (b) a statement of adjustments;
- (c) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) an assignment of the Purchased Assets and assumption of the Assumed Liabilities executed by the Purchaser and the Vendor; and
- (e) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

5.4 Risk

The Purchased Assets shall be and remain at the risk of the Debtor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder, other than the obligation of the Vendor to promptly return the Deposit to the Purchaser in accordance with the provisions of Section 2.5(b) hereof. If the Vendor shall not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

5.5 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.2, 4.4, 4.5 or 5.4:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end other than the obligation of the Vendor to promptly return the Deposit to the Purchaser in accordance with the provisions of Section 2.5(b) hereof, if applicable;
- (b) the Purchaser shall have no right to specific performance or other remedy against, or any right to recover damages or expenses from, the Vendor; and
- (c) the Vendor shall be entitled, in its sole discretion, to consummate the transaction

contemplated under the Back Up Bid without any further action by the Vendor or notice or obligation to the Purchaser.

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with, or waived by the Purchaser, and the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In addition, the Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale of the Purchased Assets (after deducting the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

5.7 Electronic Registration

In the event that a system for electronic registration ("Ereg") is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's solicitors, to complete the Transaction using Ereg in accordance with the Law Society of Ontario's guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Ontario, (ii) the Purchaser's solicitors will enter into the Vendor's solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with Law Society of Ontario's guidelines, and (iii) if the Purchaser's solicitors are unwilling or unable to complete the Transaction using Ereg, then the Purchaser's solicitors must attend at the Vendor's solicitors' office or at another location designated by the Vendor's solicitors at such time on Closing as directed by the Vendor's solicitors to complete the Transaction using Ereg utilizing the Vendor's solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's solicitors a reasonable fee therefor.

SECTION 6 - GENERAL

6.1 Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by electronic transmission, addressed:

in the case of the Purchaser, as follows:

2510300 Ontario Inc. c/o JD Development
7100 Woodbine Ave.
Suite 301
Markham, ON L3R 5J2

Attention: Julia Zhang and Maggie Ma
Telephone No: 905-479-9898

Email: Julia.Zhang@jddevelopment.ca and Maggie.Ma@jddevelopment.ca
with a copy to:

Attention: Elvis Li
Telephone No. 647-818-8366
Email: aclwd2000@gmail.com

and in the case of the Vendor, as follows:

RSM CANADA LIMITED, Court-Appointed
Receiver of 2305992 ONTARIO INC.

11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Bryan Tannenbaum
Email: bryan.tannenbaum@rsmcanada.com

with a copy to:

Miller Thomson LLP
40 King Street W., Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

Attention: Kyla Mahar
Email: kmahar@millerthomson.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.3. Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors.

6.4. Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Purchaser (as such term is defined in the Business Corporations Act (Ontario)), provided that the Purchaser

remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder, and notice of such assignment is provided to the Vendor on or before the issuance of the Approval and Vesting Order. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing.

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter herein and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval & Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Purchaser as set forth herein and on acceptance by the Vendor, is intended to create binding obligations on the part of the Purchaser, as set out herein.

6.8. Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9. Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

6.11. Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendor against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

6.12. Certain Words

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

6.13. Statutory References

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

6.14. Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.

6.15. No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property.

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

6.17. Capacity of Vendor

The Purchaser acknowledges that RSM CANADA LIMITED has been appointed as receiver and manager pursuant to the Appointment Order. The Purchaser acknowledges and agrees that RSM CANADA LIMITED is entering into this Agreement solely in its capacity as the receiver and manager and that RSM CANADA LIMITED, its directors, agents, officers, partners and employees shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of or in any way connected with this Agreement or as a result of the Vendor performing or failing to perform any of its obligations hereunder.

6.18. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations

except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

6.19. Planning Act

This Agreement is entered into subject to the express condition that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6.20. Non Merger

Each Party hereby agrees that all provisions of this Agreement (other than the Purchaser Closing Conditions, the Vendor Closing Conditions and the representations and warranties contained in Sections 3.2 and 3.3) shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

6.21. Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

6.22. Announcements

Except as required by law including applicable regulatory and stock exchange requirements, all public announcements concerning the Transaction shall be jointly approved as to form, substance and timing by the Parties after consultation.

[Remainder of page intentionally left blank]

The Parties have executed this Agreement by their duly authorized officers.

**RSM CANADA LIMITED, solely in its
capacity as Court-appointed Receiver
and Manager of 2305992 Ontario Inc.
and not in its personal capacity**

Per:



Bryan Tannenbaum, FCPA, FCA,
FCIRP, LIT

President

2510300 ONTARIO INC.

Per:



Julia Zhang

Authorized Representative

Schedule A

Purchased Assets

The Property:

PIN: 03156-0317 and 0552, Block 39, Registered Plan 65M-2079 and Part Block 3, Registered Plan 65M-2368, Town of Richmond Hill, Regional Municipality of York, Province of Ontario

Schedule B

Permitted Encumbrances

[To be confirmed prior to Approval and Vesting Order]

APPENDIX “E”

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the 3rd day of March, 2020.

BETWEEN:

RSM CANADA LIMITED,

in its capacity as Court-Appointed Receiver and Manager of the assets, undertakings and properties of **2305992 ONTARIO INC.** ("the Debtor") and not in its personal or corporate capacity

(the "Vendor")

and

2132843 Ontario Inc., in trust for a company to be incorporated

(the "Back-Up Purchaser")

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated November 28, 2019, (the "Appointment Order") RSM Canada Limited was appointed as receiver and manager 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 and including the real property described in Schedule "A" of the Appointment Order (the "Property").
- B. Pursuant to an Order of the Court dated January 9, 2020 (the "Sale Process Order"), the Court authorized the Vendor to conduct a sale process to market and sell the Property (the "Sale Process").
- C. Among other prospective bidders, the Back-Up Purchaser submitted a bid in the Sale Process, which was further improved in subsequent rounds of Sale Process.
- D. In accordance with the terms of the Sale Process, by email dated March 2, 2020, the Vendor (i) requested a third final offer from the remaining bidders in the Sale Process (including the Back-Up Purchaser), and (ii) advised the final bidders that the Sale Process was being amended to authorize the Vendor to select a "Back-Up Bid" in the event the offer selected by the Vendor as the Successful Bid fails to close.
- E. The Back-Up Purchaser submitted a further revised offer and was notified by email by the Vendor that the Back-Up Purchaser was selected as the Back-Up Bid.
- F. In the event, the Successful Bid fails to close, the Vendor desires to sell and the Back-Up Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties covenant and agree as follows:

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) **"Acceptance Date"** means the date that this Agreement is executed by the Parties;
- (b) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement.
- (c) **"Applicable Laws"** means, with respect to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event.
- (d) **"Appointment Order"** has the meaning ascribed to it in the Recitals above;
- (e) **"Approval and Vesting Order"** means an order or orders (in form and substance satisfactory to the Vendor and the Back-Up Purchaser, acting reasonably) made by the Court approving, among other things, that in the event the transaction with the Successful Bidder cannot be consummated and the Vendor delivers to the Back Up Purchaser a Transaction Notice, the Back-Up Transaction is approved and all of the right, title and interest of the Debtor in the Purchased Assets shall be vested in the Back-Up Purchaser free and clear of all Encumbrances (except the Permitted Encumbrances). For greater certainty, the vesting portion of the "Approval and Vesting Order" shall be substantially in the form of the model approval and vesting order approved by the "Ontario Commercial List Users Committee".
- (f) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.9.
- (g) **"Back-Up Bid"** means the Back-Up Transaction, which has been selected by the Vendor in accordance with the Sale Process as the bid that will become the Successful Bid in the event the Vendor is unable to consummate the transaction with the current Successful Bidder.
- (h) **"Back-Up Purchaser Closing Conditions"** has the meaning ascribed to it in Section 4.1.
- (i) **"Back-Up Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement.
- (j) **"Business Day"** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;

- (k) **"CIM"** means the confidential information memorandum prepared by the Vendor;
- (l) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (m) **"Closing"** means the successful completion of the Back-Up Transaction;
- (n) **"Closing Date"** means the date that is five (5) Business Days immediately following the date upon which the Vendor delivers to the Back-Up Purchaser the Transaction Notice, or such other date as the Parties may mutually agree upon following delivery the Transaction Notice;
- (o) **"Collateral Security"** has the meaning ascribed to it in Section 2.13;
- (p) **"Court"** has the meaning ascribed to it in the Recitals above.
- (q) **"Deposit"** has the meaning ascribed to it in Section 2.5;
- (r) **"Deposit Cheque"** has the meaning ascribed to it in 2.5;
- (s) **"Encumbrance"** means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
- (t) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a);
- (u) **"Environmental Laws"** means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials;
- (v) **"Ereg"** has the meaning ascribed to it in Section 5.7;
- (w) **"ETA"** means the *Excise Tax Act* (Canada);
- (x) **"Government Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Back-Up Transaction or one or both of the Parties and shall include a board, commission, court, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;
- (y) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some

immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;

- (z) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;
- (aa) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;
- (bb) **"Letters of Credit"** means any letters of credit issued on behalf of the Debtor in respect of the Property;
- (cc) **"Liabilities"** means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes.
- (dd) **"Parties"** means the Vendor, the Back-Up Purchaser and any other Person who may become a party to this Agreement. **"Party"** means any one of the foregoing;
- (ee) **"Permits"** means all permits, licenses and applications in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;
- (ff) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto and in Schedule "D" to the Approval and Vesting Order.
- (gg) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.
- (hh) **"Plans"** means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, the engineering drawings, architectural plans and working drawings, landscaping plans, other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the data room created by the Vendor in respect of the Back-Up Transaction.
- (ii) **"Priority Claims"** means all Claims and Liabilities that rank in priority to the First Mortgage under Applicable Law. For greater certainty, "Priority Claims" includes

amounts outstanding that are secured by the priority charges granted by the Court under the Appointment Order.

- (jj) **"Property"** has the meaning ascribed to it in the Recitals above.
- (kk) **"Purchase Price"** shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Taxes and any other taxes payable as a result of or in connection with the Back-Up Transaction.
- (ll) **"Purchased Assets"** means, collectively, the right, title and interest of the Debtor in and to the Property, the Permits and the Plans.
- (mm) **"Sale Process"** has the meaning ascribed to it in the Recitals above.
- (nn) **"Sale Process Order"** has the meaning ascribed to it the Recitals above.
- (oo) **"First Mortgage"** means the mortgage in the principal amount of \$20,000,000 in favour of the First Mortgagee registered against title to the Property as instrument number YR2192811.
- (pp) **"First Mortgagee"** means MarshallZehr Group Inc.
- (qq) **"Successful Bid"** and **"Successful Bidder"** have the meaning ascribed to terms in the Sale Process approved pursuant to the Sale Process Order.
- (rr) **"Transaction Notice"** means a written notice delivered by the Vendor to the Back-Up Purchaser confirming that (i) the Vendor was unable to consummate the transaction with the current Successful Bid; (ii) the Vendor has elected to consummate the Back-Up Transaction in accordance with the terms and conditions of this Agreement; (iii) the Vendor will immediately negotiate the Deposit Cheque; and (iv) the estimated quantum of Priority Claims as at the Closing Date. For greater certainty, the Vendor may deliver the Transaction Notice to the Back-Up Purchaser by email.
- (ss) **"Taxes"** means all HST, Land Transfer Tax, charges, fees, levies, imposts and other assessments, including all sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto.
- (tt) **"Vendor Closing Conditions"** has the meaning ascribed to it in Section 4.3.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

The following Schedules are incorporated in and form part of this Agreement;

Schedule "A"	Purchased Assets
Schedule "B"	Permitted Encumbrances

SECTION 2 — SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Back-Up Purchaser shall purchase the Purchased Assets and the Back-Up Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Back-Up Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets. The Back-Up Purchaser further acknowledges that the Purchased Assets do not include any interest in the Letters of Credit, in respect of which, the provisions of Section 2.13 hereof shall govern.

2.2 "As is, Where is"

The Back-Up Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Back-Up Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including any latent or patent defects in the Purchased Assets. The Back-Up Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Back-Up Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning, permitted uses, permits, compliance with Applicable Laws of Governmental Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof (the "Environmental Condition"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Back-Up Purchaser. The descriptions of the Purchased Assets contained

in this Agreement are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Back-Up Purchaser further acknowledges that all written and oral information (including, analyses, financial information and projections, compilations and studies) obtained by the Back-Up Purchaser from the Vendor or any agent of the Vendor (including, any information contained in any of the Plans and the CIM) with respect to the Purchased Assets or otherwise relating to the Back-Up Transaction has been obtained for the convenience of the Back-Up Purchaser only and is not warranted to be accurate or complete. The Back-Up Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Back-Up Purchaser and that it shall be the Back-Up Purchaser's responsibility to take possession of the Purchased Assets.

- (b) notwithstanding any statutory provisions to the contrary, the Back-Up Purchaser has no right to submit requisitions on title or in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authority and the Back-Up Purchaser shall accept the title to the Property subject to the Permitted Encumbrances.
- (c) the various parties who prepared the Plans may have restricted the use thereof by the Debtor only, in their respective retainers with the Debtor and any purported conveyance of the Plans by the Vendor to the Back-Up Purchaser may be subject to such limitations.

2.3 Permitted Encumbrances

The Back-Up Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge such Permitted Encumbrances on the Closing or thereafter.

2.4 Purchase Price

The purchase price payable by the Back-Up Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be an amount of [REDACTED]

2.5 Deposit

The Parties acknowledge and agree that a cheque in the amount of [REDACTED] (the "Deposit" and the cheque being the "Deposit Cheque") has been delivered by the Back-Up Purchaser to the Vendor. The Vendor will not negotiate the Deposit Cheque unless and until such time as the Vendor delivers to the Purchaser the Transaction Notice. Upon delivery by the Vendor to the Back-Up Purchaser of the Transaction Notice, the Vendor will negotiate the Deposit Cheque and the Deposit will be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

- (a) if the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) if the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Back-Up Purchaser hereunder, then the Deposit shall be released from trust and paid to the Back-Up Purchaser

in full satisfaction of all Claims incurred by the Back-Up Purchaser as a result of such non-completion; or

- (c) if the purchase and sale of the Purchased Assets is not completed on the Closing Date as a result of the Back-Up Purchaser's default hereunder (including for failing to satisfy a Vendor Closing Condition that is not waived by the Vendor) then the Deposit shall be released from trust and paid to the Vendor without prejudice to the Vendor's rights to claim damages, losses, costs and expenses incurred by the Vendor as a result of such failure.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows at Closing:

- (a) the Deposit shall be credited against the Purchase Price in accordance with Section 2.5(a);
- (b) a payment by wire transfer of immediately available funds in an amount equal to the Priority Claims (if any);
- (c) the assumption of the indebtedness owing to the First Mortgagee in an amount equal to the lesser of: (i) [REDACTED] and [REDACTED];
- (d) the balance of the Purchase Price (if any) after the payments and assumption of indebtedness contemplated under subparagraphs (a), (b) and (c) of this Section, shall be paid to the Vendor (or as the Vendor may direct) by wire transfer of immediately available funds.

For greater certainty, the Back-Up Purchaser is entitled to satisfy the Purchase Price in all cash by wire transfer of immediately available funds.

2.7 Allocation of Purchase Price

The entire Purchase Price shall be allocated to the Property (as opposed to any other item forming part of the Purchased Assets, to the extent applicable) and the Parties shall ensure that the Back-Up Purchaser and the Vendor shall follow such allocation in determining and reporting their liabilities for any Taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocation, provided that nothing herein shall require the Vendor to file any income tax returns that it is not otherwise required to file.

2.8 Excluded Liabilities

Other than the Assumed Liabilities, the Back-Up Purchaser shall not assume and shall not be liable for any other Liabilities of the Vendor or the Debtor.

2.9 Assumed Liabilities

From and after Closing, the Back-Up Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

- (a) Permitted Encumbrances;
- (b) the amount of the indebtedness owing to the First Mortgagee and secured by the First Mortgage that is assumed by the Back-Up Purchaser in satisfaction of the Purchase Price pursuant to Section 2.6(c), provided that, this provision shall not apply if the Back-Up Purchaser pays the Purchase Price in all cash on Closing;
- (c) from the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and
- (d) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

(the foregoing being the "Assumed Liabilities").

2.10 Taxes

In addition to the Purchase Price, the Back-Up Purchaser shall pay all applicable Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, HST and Land Transfer Tax.

The Back-Up Purchaser will be a HST registrant under the ETA on or before the Closing Date and will provide its registration number to the Vendor on or before the Closing Date.

If part or all of the Back-Up Transaction is subject to HST and:

- (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the ETA; and/or
- (ii) the Back-Up Purchaser is a "prescribed recipient" under the ETA and/or is registered under the ETA,

then the Back-Up Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the ETA or, if no such form is prescribed, then in reasonable form, certifying that the Back-Up Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Governmental Authority all HST payable in respect of the Back-Up Transaction. If sub-paragraph (a)(ii) above is applicable, then the Back-Up Purchaser's certificate shall also include certification of the Back-Up Purchaser's prescription and/or registration as the case may be, and the Back-Up Purchaser's HST registration number. If the Back-Up Purchaser shall fail to deliver its certificate, then the Back-Up Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Back-Up Transaction.

The Back-Up Purchaser hereby indemnifies and holds the Vendor harmless from and against any liability for Taxes, including HST and Land Transfer Tax, arising out of any failure to pay such taxes as and when due, together with all interest, penalties and expenses resulting from such failure.

2.11 Inspections

The Vendor will permit the Back-Up Purchaser, its consultants, agents and representatives to

carry out, at the Back-Up Purchaser's sole expense and risk, such tests and investigations (including structural and physical tests, soil tests and environmental audits) and inspections as the Back-Up Purchaser, acting reasonably, may deem necessary with respect to the Property, subject to and conditional upon the following terms and conditions:

- (a) any invasive testing shall require the Vendor's written approval prior to such testing;
- (b) the Back-Up Purchaser shall provide at least two (2) Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;
- (c) all soil tests or environmental audits shall be coordinated with the Vendor;
- (d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Back-Up Purchaser and the Back-Up Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Back-Up Purchaser; and
- (e) prior to entering the Property to conduct the Back-Up Purchaser's tests and investigations, the Back-Up Purchaser shall deliver (or shall cause its representatives completing the Back-Up Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least \$2,000,000.

The Back-Up Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.11 by the Back-Up Purchaser. To the extent that the Back-Up Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.12 [Intentionally Deleted]

2.13 Letters of Credit

The Back-Up Purchaser covenants and agrees that on Closing, it shall be required to substitute the Letters of Credit with replacement letters of credit of its own such that the Letters of Credit shall be released and returned for cancellation. In addition to the foregoing, to the extent that the Letters of Credit are collaterally secured, whether by a cash account or otherwise (the "Collateral Security"), the Back-Up Purchaser shall further be required on Closing to replace the Collateral Security as may be necessary to release and return same to the Vendor or as it may otherwise direct. The Back-Up Purchaser shall be solely responsible for payment of all costs and expenses attributable to the performance of the foregoing obligations.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Back-Up Purchaser's Covenants

The Back-Up Purchaser covenants and agrees that it will effective on and after the Closing Date, assume and be fully responsible for:

- (a) all obligations which are to be observed or performed from and after completion of the Back-Up Transaction under the Permitted Encumbrances; and
- (b) any other obligations and liabilities assumed by the Back-Up Purchaser as provided for by this Agreement.

3.2 Back-Up Purchaser's Representations

The Back-Up Purchaser represents and warrants to the Vendor that:

- (a) the Back-Up Purchaser is or will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;
- (b) the Back-Up Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the Back-Up Transaction has been duly authorized by all necessary corporate action on the part of the Back-Up Purchaser;
- (c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Back-Up Purchaser, the validity or enforceability of this Agreement against the Back-Up Purchaser, or the performance by the Back-Up Purchaser of any of its obligations hereunder;
- (d) the Back-Up Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Back-Up Purchaser's knowledge, threatened against or relating to the Back-Up Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Back-Up Purchaser to enter into this Agreement or to consummate the Back-Up Transaction and the Back-Up Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;
- (f) this Agreement and all other documents contemplated hereunder to which the Back-Up Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Back-Up Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Back-Up Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (g) the Back-Up Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*; and

- (h) the Back-Up Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Vendor's Representations

The Vendor represents and warrants to the Back-Up Purchaser as follows:

- (a) the Vendor has been duly appointed as the receiver and manager of the Purchased Assets pursuant to the Appointment Order and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and
- (b) the Vendor is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act (Canada)*.

3.4 Survival of Representations and Warranties

The representations and warranties contained in Section 3.2 hereof or any other agreement, certificate or instrument delivered by the Back-Up Purchaser to the Vendor pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, for a period of twelve (12) months from the Closing Date, after which time the Back-Up Purchaser shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by the Vendor in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

SECTION 4 — CONDITIONS

4.1 Back-Up Purchaser Closing Conditions

The obligation of the Back-Up Purchaser to complete the Back-Up Transaction is subject to the following conditions precedent being fulfilled or performed at or prior to the Closing Date (the "**Back-Up Purchaser Closing Conditions**"):

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Back-Up Purchaser at the Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement; and
- (c) the Approval and Vesting Order shall not have been stayed, varied or set aside.

The Back-Up Purchaser Closing Conditions are for the exclusive benefit of the Back-Up Purchaser. Any Back-Up Purchaser Closing Condition may be waived by the Back-Up Purchaser in whole or in part. Any such waiver shall be binding on the Back-Up Purchaser only if made in writing.

4.2 Back-Up Purchaser Closing Conditions Not Fulfilled

If any Back-Up Purchaser Closing Condition has not been fulfilled at or prior to Closing, then the Back-Up Purchaser in its sole discretion may, either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Back-Up Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Back-Up Purchaser in accordance with the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Back-Up Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Back-Up Purchaser Closing Condition.

4.3 Vendor Closing Conditions

The obligation of the Vendor to complete the Back-Up Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date (the "Vendor Closing Conditions"):

- (a) the Vendor shall have delivered to the Purchaser the Transaction Notice;
- (b) prior to the granting of the Approval and Vesting Order, the Vendor shall have received an opinion from its independent legal counsel that the First Mortgage is valid and enforceable;
- (c) all representations and warranties of the Back-Up Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (d) the Back-Up Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement; and
- (e) there shall be no litigation or proceedings pending against any of the Parties hereto, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Back-Up Transaction or otherwise claiming that such completion is improper.

The Vendor Closing Conditions are for the exclusive benefit of the Vendor. Any Vendor Closing Condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing.

4.4 Vendor Closing Conditions Not Fulfilled

If any Vendor Closing Condition, other than Subsections 4.3(a) and (b), shall not have been fulfilled at or prior to Closing, then the Vendor in its sole discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (a) terminate this Agreement by notice to the Back-Up Purchaser in which event the

Vendor shall be released from all obligations under this Agreement and the Deposit shall be retained by the Vendor in accordance with the provisions of Section 2.5 hereof, provided that the Vendor shall return the Deposit to the Back-Up Purchaser; or

- (b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

If the Vendor Closing Conditions set out in Subsections 4.3(a) and (b) are not or, in the Vendor's opinion acting reasonably, are incapable of being fulfilled, the Vendor, in its sole discretion, may terminate this Agreement by written notice to the Back-Up Purchaser in which event the Parties shall be released from all of their respective obligations under this Agreement and the Deposit shall be promptly returned to the Back-Up Purchaser.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Back-Up Purchaser hereunder are subject to the mutual condition that the Approval and Vesting Order shall have been made by the Court on or before April 10, 2020 (or such later date agreed upon by the Parties). The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Back-Up Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Back-Up Purchaser is not in default of its obligations hereunder, the Deposit or Deposit Cheque, as the case may be, shall be promptly returned to the Back-Up Purchaser in accordance with the provisions of Section 2.5 hereof.

SECTION 5 — CLOSING

5.1. Closing

The completion of the Back-Up Transaction shall take place on the Closing Date or as otherwise determined by mutual agreement of the Parties in writing.

5.2. Back-Up Purchaser's Deliveries on Closing

On or before the Closing, the Back-Up Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the cash portion of the Purchase Price;
- (b) if applicable, an assumption agreement executed by the Back-Up Purchaser and First Mortgagee in respect of the assumption by the Back-Up Purchaser of the First Mortgage and amounts outstanding thereunder;
- (c) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Back-Up Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (d) an acknowledgement dated as of the Closing Date, that each of the Back-Up

Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;

- (e) assignment of Purchased Assets and assumption of the Assumed Liabilities executed by the Back-Up Purchaser and the Vendor;
- (f) the certificate and indemnity provided for under Section 2.10;
- (g) evidence satisfactory to the Vendor, acting reasonably, that the Letters of Credit and Collateral Security have been released and returned, as applicable, in accordance with the provisions of Section 2.13;
- (h) an undertaking to re-adjust any item on or omitted from the statement of adjustments; and
- (i) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

On or before the Closing, the Vendor shall execute and deliver to the Back-Up Purchaser the following, each of which shall be in form and substance satisfactory to the Back-Up Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order(s) and the receiver's certificate relating thereto;
- (b) a statement of adjustments;
- (c) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) an assignment of the Purchased Assets and assumption of the Assumed Liabilities executed by the Back-Up Purchaser and the Vendor; and
- (e) such further and other documentation as is referred to in this Agreement or as the Back-Up Purchaser may reasonably require to give effect to this Agreement.

5.4 Risk

The Purchased Assets shall be and remain at the risk of the Debtor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Back-Up Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Back-Up Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Back-Up Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Vendor shall not elect to terminate this Agreement as set out above, then the Back-Up Transaction shall be completed in accordance with the terms and conditions hereof and the Back-Up Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

5.5 Termination

If either the Vendor or the Back-Up Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.2, 4.4, 4.5 or 5.4:

- (a) all the obligations of both the Vendor and Back-Up Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Back-Up Purchaser shall have no right to specific performance or other remedy against, or any right to recover damages or expenses from, the Vendor.

5.6 Breach by Back-Up Purchaser

If all of the Back-Up Purchaser Closing Conditions have been complied with, or waived by the Back-Up Purchaser, and the Back-Up Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Back-Up Purchaser elect to treat this Agreement as having been repudiated by the Back-Up Purchaser. In addition, the Back-Up Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale of the Purchased Assets (after deducting the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Back-Up Purchaser.

5.7 Electronic Registration

In the event that a system for electronic registration ("Ereg") is operative and mandatory in the applicable land registry office, the Back-Up Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's solicitors, to complete the Back-Up Transaction using Ereg in accordance with the Law Society of Ontario's guidelines. If Ereg is operative on the Closing Date, (i) the Back-Up Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Ontario, (ii) the Back-Up Purchaser's solicitors will enter into the Vendor's solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Back-Up Transaction provided same are in accordance with Law Society of Ontario's guidelines, and (iii) if the Back-Up Purchaser's solicitors are unwilling or unable to complete the Back-Up Transaction using Ereg, then the Back-Up Purchaser's solicitors must attend at the Vendor's solicitors' office or at another location designated by the Vendor's solicitors at such time on Closing as directed by the Vendor's solicitors to complete the Back-Up Transaction using Ereg utilizing the Vendor's solicitors' computer facilities, in which event, the Back-Up Purchaser shall pay to the Vendor's solicitors a reasonable fee therefor.

SECTION 6 - GENERAL

6.1. Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by electronic transmission, addressed:

in the case of the Back-Up Purchaser, as follows:

Attention: Albert Gasparro
 Telephone No: 416-274-6516
 Email: agasparro@ggroupdevelopment.com

and in the case of the Vendor, as follows:

RSM CANADA LIMITED, Court-Appointed
 Receiver of 2305992 ONTARIO INC.
 11 King Street West
 Suite 700, PO Box 27
 Toronto, ON M5H 4C7

Attention: Bryan Tannenbaum
 Email: bryan.tannenbaum@rsmcanada.com

with a copy to:

Miller Thomson LLP
 40 King Street W., Suite 5800
 P.O. Box 1011
 Toronto, ON M5H 3S1

Attention: Kyla Mahar
 Email: kmahar@millerthomson.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.3. Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Back-Up Purchaser or by their respective solicitors.

6.4. Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Back-Up Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Back-Up Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Back-Up Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)),

provided that the Back-Up Purchaser remains liable, jointly, with such affiliate for all the obligations of the Back-Up Purchaser hereunder, and notice of such assignment is provided to the Vendor on or before the issuance of the Approval and Vesting Order. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Back-Up Purchaser and the Vendor. The Vendor and the Back-Up Purchaser may consent to any such amendment at any time prior to the Closing.

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter herein and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval & Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Back-Up Purchaser as set forth herein and on acceptance by the Vendor, is intended to create binding obligations on the part of the Back-Up Purchaser, as set out herein.

6.8. Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement, document or instrument executed or delivered in connection with this Back-Up Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9. Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

6.11. Commission

The Back-Up Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Back-Up Transaction, and the Back-Up Purchaser agrees to indemnify the Vendor against any

claim for compensation or commission by any third party or agent retained by the Back-Up Purchaser in connection with, or in contemplation of, the Back-Up Transaction.

6.12. Certain Words

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

6.13. Statutory References

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

6.14. Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.

6.15. No Registrations

The Back-Up Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Back-Up Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Back-Up Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Back-Up Purchaser shall be deemed to be in default of its obligations hereunder. The Back-Up Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property.

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

6.17. Capacity of Vendor

The Back-Up Purchaser acknowledges that RSM CANADA LIMITED has been appointed as receiver and manager pursuant to the Appointment Order. The Back-Up Purchaser acknowledges and agrees that RSM CANADA LIMITED is entering into this Agreement solely in its capacity as the receiver and manager and that RSM CANADA LIMITED, its directors, agents, officers, partners and employees shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of or in any way connected with this Agreement or as a result of the Vendor performing or failing to perform any of its obligations

hereunder.

6.18. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

6.19. Planning Act

This Agreement is entered into subject to the express condition that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with.

6.20. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6.21. Non Merger

Each Party hereby agrees that all provisions of this Agreement (other than the Back-Up Purchaser Closing Conditions, the Vendor Closing Conditions and the representations and warranties contained in Sections 3.2 and 3.3) shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

6.22. Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Back-Up Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

6.23. Announcements

Except as required by law including applicable regulatory and stock exchange requirements, all public announcements concerning the Back-Up Transaction shall be jointly approved as to form, substance and timing by the Parties after consultation.

[Remainder of page intentionally left blank]

The Parties have executed this Agreement by their duly authorized officers.

**RSM CANADA LIMITED, solely in its capacity as
Court-Appointed Receiver and Manager of
2305992 ONTARIO INC., and not in its personal capacity**

Per: 

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
Title: President

**2132843 ONTARIO INC., in trust for a company to be
incorporated**

Per: 

Name: Albert Gasparro
Title: Director

Schedule A

Purchased Assets

1. The Property:

PIN: 03156-0317 and 0552, Block 39, Registered Plan 65M-2079 and Part Block 3, Registered Plan 65M-2368, Town of Richmond Hill, Regional Municipality of York, Province of Ontario

Schedule B

Permitted Encumbrances

[To be confirmed prior to Approval and Vesting Order]

1. The First Mortgage;

APPENDIX “F”



DISCHARGE STATEMENT as at April 1, 2020

Prepared: March 13, 2020

Terms:

Tranche 1 \$ 6,000,000 @ Prime plus 5% per annum, calculated, compounded and payable monthly;

Tranche 2 \$14,000,000 @ 13.5% per annum as follows: 8% calculated, compounded and paid monthly and 5.5% calculated and compounded semi-annually, not in advance, with interest accruing to the maturity date or the date of full repayment of the loan.

Wrap up interest calculation in effect as at July 1, 2018 until fully discharged with a rate of 25.00%, calculated, compounded and payable

Yee Hong Garden Terrance - RMBG 1460

Town of Richmond Hill, Ontario

	Tranche 1	Tranche 2	Total
Principal Amount Outstanding	\$ 6,000,000.00	\$ 13,349,429.01	\$ 19,349,429.01
Unpaid Monthly Payable Interest	322,012.29	2,701,327.64	\$ 3,023,339.93
Accrued Interest	-	4,776,653.67	\$ 4,776,653.67
Wrap up Interest*	2,155,540.22	3,892,928.59	\$ 6,048,468.81
Mortgage Subtotal	\$ 8,477,552.51	\$ 24,720,338.91	\$ 33,197,891.42
Administration Fee Payable on Default - 64 months (Jan 2015 - April 2020)			\$ 320,000.00
Cost recovery - MarshallZehr 3rd party invoices			\$ 131,076.55
Amendment Fee (June 20, 2018 Amendment)			\$ 25,000.00
MarshallZehr Administration Fee			\$ 250.00
Fee Subtotal			\$ 476,326.55
Less Balance held in MZG Trust Account			\$ -
Balance due April 1, 2020**			\$ 33,674,217.97

* Effective start date of July 1, 2018

** Payment must be received by 1:00pm or per diem interest will be added

	Tranche 1	Tranche 2	Total
Accrued Interest Perdiem	\$ -	\$ 2,677.11	\$ 2,677.11
Monthly Payable Interest Perdiem	\$ 1,538.12	\$ 3,428.66	\$ 4,966.78
Wrap Up Interest Perdiem	\$ 4,252.17	\$ 8,251.80	\$ 12,503.97
Total PerDiem beyond April 1, 2020			\$ 20,147.86

You are authorized and directed to make the balance due payable to our solicitor; **Miller Thomson LLP "In Trust"**, OR as they may further direct.

The funds are due and payable by certified cheque or wire transfer.

MARSHALLZEHR GROUP INC.

Per: _____

Mortgage Administrator #: 11955

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid for a period of 30 days from the Proposed Settlement Date. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

SECOND REPORT OF THE RECEIVER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar LSO#: 44182G

kmahar@millerthomson.com

Asim Iqbal LSO#: 61884B

aiqbal@millerthomson.com

Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited, Court-
appointed Receiver of 2305992 Ontario Inc.

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 1
)	
JUSTICE McEWEN)	DAY OF APRIL, 2020

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of 2305992 Ontario Inc. (the “**Debtor**”) for an order approving: (i) the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 9750 Yonge Limited (as assignee of 92510300 Ontario Inc.) (the “**Purchaser**”) dated March 3, 2020 and appended to the Second Report of the Receiver dated March 16, 2020 (the “**Second 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**”), the Debtor’s right title and interest in and to the assets described in the Back-Up Sale Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of Alina Stoica sworn March ●, 2020, filed:

1. **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.

2. **THIS COURT ORDERS** that in the event the Transaction contemplated by the Sale Agreement cannot be consummated, the Back-Up Bid (as defined in the Second Report) is approved and the execution of the asset purchase agreement by the Receiver in respect of the Back-Up Bid is authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Back-Up Transaction (as defined in the Second Report) and for the conveyance of the Debtor's right, title and interest in and to the purchase assets described in the Back-Up APS.

3. **THIS COURT ORDERS** that in the event the Transaction cannot be consummated and the Receiver proceeds to consummate the Back-Up Transaction, the Receiver may return to this Court at a 9:30 a.m. chambers appointment to obtain a revised approval and vesting order in respect of the Back-Up Transaction substantially in the form of this Order with such modifications as deemed necessary by the Receiver and approved by this Court.

4. **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 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 McEwen dated November 28, 2019; (ii) any and all interest of any beneficial owners of the Purchased Assets, (iii) 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 (iv) 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.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (No. 65) 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.

6. **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.

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, 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.

9. **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-19-00628446-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and –

2305992 ONTARIO INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated November 28, 2019, RSM Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of 2305992 Ontario Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of March 3, 2020 (the “**Sale Agreement**”) between the Receiver and 2510300 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 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 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],
2020

**RSM Canada Limited, in its capacity as
Receiver of the undertaking, property and
assets of 2305992 Ontario Inc., and not in its
personal capacity**

Per: _____

Name:

Title:

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

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2192811	2014/09/26	Charge	\$20,000,000	2305992 Ontario Inc.	MarshallZehr Group Inc.
YR2192812	2014/09/26	No Assgn Rent Gen		2305992 Ontario Inc.	Marshallzehr Group Inc.
YR2981230	2019/07/09	Charge	\$5,500,000	2305992 Ontario Inc.	2704553 Ontario Inc.
YR3040602	2019/11/29	Construction Lien	\$20,780	Weston Consulting Group Inc.	
YR3047211	2019/12/16	Application Court Order (Remarks: Appointing Receiver)		Ontario Superior Court of Justice	RSM Canada Limited
YR3054586	2020/01/9	Certificate of Action		Weston Consulting Group Inc.	

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Instrument No. LT69477 registered on December 17, 1981 - Notice of Subdivision Agreement with The Corporation of the Town of Richmond Hill
2. Instrument No. LT74777 registered on February 17, 1982 - Transfer of Easement in favour of The Corporation of the Town of Richmond Hill
3. Instrument No. LT789803 registered on October 3, 1991 - partial Release relating the easement with Richmond-Hill Hydro-Electric Commission as in Instrument No. LT225225
4. Instrument No. YR1882796 registered on September 10, 2012 - Transfer of Easement in favour of Rogers Communications Inc.
5. Instrument No. YR2257896 registered on February 20, 2015 - Plan Expropriation with The Regional Municipality of York
6. Instrument No. YR2802957 registered on March 7, 2018 - Certificate of Approval by The Regional Municipality of York
7. Instrument No. YR2818461 registered on April 20, 2018 - Plan Expropriation with The Regional Municipality of York.

MARSHALLZEHR GROUP INC.
Applicant

and

2305992 ONTARIO INC.
Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla E.M. Mahar (LSO# 44182G)

kmahar@millerthomson.com

Asim Iqbal (LSO# 61884B)

aiqbal@millerthomsom.com

Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited, in its capacity
as Court-appointed Receiver of 2305992 Ontario
Inc.

TAB 4

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms used but not otherwise defined in this Order are defined in the Second Report.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL OF RECEIVER'S ACTIVITIES

3. **THIS COURT ORDERS** that the Second Report and the conduct and activities of the Receiver set out therein are approved, provided that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

INTERIM DISTRIBUTIONS

4. **THIS COURT ORDERS** that, upon the closing of the Successful Transaction or the Back-Up Transaction, the Receiver is authorized and directed to make the following distributions (in the order of priority set out below) from and to the extent of the proceeds available for distribution from the closing of the Successful Transaction or Back-Up Transaction (as the case may be, the "**Sale Proceeds**"):

- (a) to the beneficiaries of the Receiver's Charge (as defined in the Order of Justice McEwen dated October 9, 2019 (the "**Receivership Order**")) on account of all unpaid professional fees and disbursements;
- (b) to MarshallZehr Group Inc. ("**MZ**") on account of outstanding principal and interest in respect of amounts advanced to the Receiver that are secured by the Receiver's Borrowing Charge (as defined in the Receivership Order); and
- (c) to claimants on account of claims that rank in priority to the secured claims of MZ (if any);

- (d) to MZ, up to the amount of the indebtedness owed by the Debtor to MZ on account of outstanding principal and interest (excluding fees, costs and “wrap up” interest) that is secured under the First Mortgage.

SEALING ORDER

- 5. **THIS COURT ORDERS** that the Confidential Appendices 1, 2 and 3 to the Second Report are sealed until completion of the Successful Transaction or the Back-Up Transaction (as the case may be) or further Order of this Court.
-

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

ONTARIO
**SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

INTERIM DISTRIBUTION ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla E.M. Mahar (LSO# 44182G)

kmahar@millerthomson.com

Asim Iqbal (LSO# 61884B)

aiqbal@millerthomson.com

Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited, in its capacity
as Court-appointed Receiver of 2305992 Ontario
Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANT
(returnable April 1, 2020)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar LSO#: 44182G

kmahar@millerthomson.com
Tel: 416.597.4303 / Fax: 416.595.8695

Asim Iqbal LSO# 61884V

aiqbal@millerthomson.com
Tel: 416.595.2975 / Fax: 416.595.8695

Lawyers for RSM Canada Limited in its capacity
as Court-appointed Receiver of 2305992 Ontario
Inc.