

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

THE HONOURABLE JUSTICE

T. McEWEN

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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.



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## 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:

<b>Milestone</b>	<b>Deadline</b>
<b>Sale Process Commencement Date:</b>	December 27, 2019
<b>Bid Deadline</b>	February 13, 2020 at Noon (EST)
<b>Closing Date (on or before)</b>	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**

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