

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

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

RESPONDENT

**RESPONDING MOTION RECORD  
OF 1267989 ONTARIO INC. o/a  
DUNCAN DRYWALL  
(Returnable May 10, 2021)**

Date: May 4, 2021

**PAUL J. DAFFERN LAW FIRM**  
Barristers & Solicitors  
48 High Street  
Barrie, Ontario L4N 1W4

**PAUL J. DAFFERN**  
LSO#28383M  
Tel: 705-725-9670  
Fax: 705-725-8764  
paul.daffern@daffernlaw.com

Lawyer for 1267989 ONTARIO  
INC. o/a Duncan Drywall

TO: ALL PARTIES ON THE ATTACHED SERVICE LIST



**SERVICE LIST**  
(current as of February 16, 2021)

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

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



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



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



## TABLE OF CONTENTS

<b>TAB</b>	<b>DESCRIPTION</b>
1.	Affidavit of Robert Duncan sworn May 5th, 2021
A.	Letter to Jeff Larry dated July 24, 2020
B.	Statement of Claim dated February 11, 2020
C.	Email from Paul Daffern to Jeff Larry dated January 26, 2021
D.	Email from Jeff Larry to Paul Daffern dated February 4, 2021
E.	Sum of Transaction Amount for December 12, 2016



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

B E T W E E N:

MARSHALLZEHR GROUP INC.

APPLICANT

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

RESPONDENT

**AFFIDAVIT OF ROBERT DUNCAN  
SWORN MAY 5th, 2021**

I, Robert Duncan, of the City of Barrie, the president of 1267989 Ontario Inc. o/a Duncan Drywall Inc. MAKE OATH AND SAY:

1. I have made this Affidavit in response to a Motion Record served by RSM Canada Limited, the Receiver of Fernwood Developments (Ontario) Corporation dated April 30, 2021, returnable in the Commercial Court in Toronto on May 10, 2021.
2. I am informed by my lawyer, Paul J. Daffern that this Motion Record was served by email sent by Michelle Jackson of Paliare Roland Rosenberg Rothstein LLP, counsel for RSM, at 5:00 p.m. on Friday, April 30, 2021.
3. I have read the Motion Record and respond to the motion with this Affidavit. In particular, I object to the proposal by RSM that only \$178,195.00 plus H.S.T. be held in trust by RSM. I claim that in addition to that sum, a further 25% of that amount for security for my company's legal costs be held. I further request



that an Order be made that all of these monies be paid into Court to the credit of my company's lien claim.

4. I therefore ask for an Order that in addition to the sum of \$178,195.00 be paid into Court that the sum of \$23,165.35 in H.S.T. be paid into Court ( $\$178,195.00 \times .13 = \$23,165.35$ ),  $\$178,195.00 + \$23,165.35 = \$201,360.35$ .
5. In addition, I ask for an Order that an additional \$50,340.09 be paid into Court as security for my company's costs ( $\$201,360.35 \times .25 = \$50,340.09$ ).
6. I therefore ask for an Order that the sum of \$251,700.49 be paid into Court to the credit of my company's Construction Lien Action.
7. I also request leave from this Honourable Court to proceed with my Construction Lien Action in Barrie since RSM has not in the last year determined whether my company's construction lien has priority over the MarshallZehr's ("MZ") mortgage.
8. My lawyer wrote a lengthy letter to Jeff Larry, counsel for RSM on July 24, 2020, providing details about why my company claims it is entitled to priority over MZ's mortgage. A copy of that letter is Exhibit "A" to my Affidavit.
9. As is stated in Mr. Daffern's letter that is Exhibit "A" to my Affidavit, my company first began to work on this project site on March 30, 2016. As a result, I claim that my company's first lien arose that day pursuant to section 15(1) of the *Construction Lien Act*.

10. As my lawyer's letter indicates, the first work my company did was in building 5. Work began on building 6 on April 28, 2016 and on a Sales Pavilion in May, 2016. The Sales Pavilion was used to market and sell units in all buildings on this project site.
11. There is no dispute by the owner of the property, Fernwood Developments (Ontario) Corporation that my company is owed the amounts claimed.
12. Mr. Jordan Zukowski, an officer and director of Fernwood admitted that my company was actually owed more than the amount of the lien claim. Mr. Zukowski admitted my company was owed at least \$190,695.00. Mr. Zukowski signed a Direction to lawyer Lisa Gazzola of the law firm of Smith, Valeriote in Guelph, Ontario directing her to pay my company out of the sale of certain units when the sale of those units was concluded. My understanding is that these sales were not completed. A copy of this Direction is found in the attachments to Exhibit "A" to my Affidavit.
13. I further submit that MZ refinanced the mortgage it took from Fernwood Developments (Ontario) Corporation between the time of the initial advance and prior to when RSM was appointed as Receiver Manager.
14. It also appears that although MZ secured its loans with these mortgages, it did not fully advance these mortgages and much of the money that it agreed to lend to the borrower was not advanced or was used for some other purpose than improving the premises.



15. My lawyer wrote to Mr. Jeff Larry, counsel for RSM to ask him to provide him with the details related to the mortgages and when the advances took place. It appears that Mr. Larry made some enquiries about when the mortgage advances took place and this information indicates that only part of the original mortgage was advanced prior to when my company started work on this project.
16. Mr. Larry has apparently concluded that my company's claim for lien is limited to 10% of the amount of my company's total contract price which was \$240,000.00 plus H.S.T. for a total contract price of \$271,200.00 ( $\$240,000.00 \times .13 = \$31,200.00$ ) and ( $\$240,000.00 + \$31,200.00 = \$271,200.00$ ).
17. Mr. Larry asked my lawyer to agree that the maximum amount my company may be entitled to be paid in priority to MZ is limited to \$24,000.00. I do not know why Mr. Larry or his client RSM came up with this number but it appears that they are suggesting that the Construction Lien Holdback that should have been retained by the owner was \$24,000.00 for my company's work. If this is in fact the basis of their calculation then I disagree with their conclusions.
18. The first point I think is important is that to date, I have not received satisfactory information about what was the value of the land was when the MZ mortgage was registered.
19. I believe that a mortgage registered prior to when the first lien arose is entitled to priority but only to a maximum of the value of the land at the time of registration. I understand this is set out in section 78(3) of the *Construction Lien Act*.

20. I have been provided with a copy of a Statement of Claim that Fernwood Developments (Ontario) Corporation commenced as the Plaintiff against MarshallZehr Group Inc. as a Defendant in Kitchener-Waterloo as Court File No. CV-20-253. A copy of this Statement of Claim is Exhibit "B" to my Affidavit.
21. In Exhibit "B" at paragraph 7, Fernwood claimed that MZ first agreed to provide financing for Phase 1 of this project pursuant to a mortgage commitment for a loan of \$13,750,000.00 dated December 5, 2013. It is not indicated whether any of this money was to be used to purchase the land or when this mortgage was actually advanced.
22. In paragraph 8 of the Exhibit "B", Fernwood claimed that the start of construction was delayed for approximately a year and the first commitment was amended three times between March 17, 2014, and August 23, 2016.
23. It therefore appears that my company's first lien on the property in question may have arose before any portion of the mortgage was advanced by MZ.
24. There is no indication in Exhibit "B" what the land value was when the original first mortgage was advanced by MZ..
25. In the first report of the Receiver RSM, Tab B, page 87 of the Motion Record (for approval of the sale that is returnable May 10, 2021), the Receiver reported that the first mortgage in favour of MZ was registered on September 20, 2016. This was almost six months after my company started work onsite on March 30, 2016.



26. It therefore appears that the MZ mortgage was registered after the first lien arose in respect of the improvements and therefore the lien claimants have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owners under PART IV of the *Construction Lien Act* (Section 78(5) *Construction Lien Act*).
27. It appears that Fernwood did not hold back any monies with respect to the improvements made at Tab B, page 90, paragraph 20 of the First Report of the Receiver, there is a statement that Fernwood had a total of \$22.01 in its bank as of February 28, 2020. It therefore appears that the lien claimants have priority over the mortgage up to the full amount of the holdbacks that Fernwood should have retained, being 10% of the total cost of construction on the property.
28. There does not appear to have been any attempt by RSM or its independent counsel to determine what the amount of the construction lien holdbacks should have been retained by the owner.
29. It therefore appears that the holdback amount that should have been retained by the owner is equal to as much as 10% of the monies advanced to it by MZ. Based upon the face value of this original mortgage, the holdback amount could be as much as 10% of the face value of the mortgage or 10% of \$15,450,000.00, for a total holdback of \$1,545,000.00

**REFINANCING**

30. In Exhibit "B", paragraph 10, Fernwood claims that MarshallZehr refinanced its existing \$15,450,000.00 mortgage by a second commitment. This second commitment was amended on May 17, 2017, April 17, 2018, and on September 5, 2018. This refinancing was allegedly done to provide additional funds to Fernwood to complete the project.
31. As both the first mortgage commitment and the second mortgage commitment were building mortgages intended to secure the financing of improvements on the property, I claim my construction lien has priority over that mortgage to the extent of any deficiency by the owner in retaining holdback monies. I submit that this in effect increased the holdback the owner was required to retain by another \$450,000.00 or 10% of the increase in the mortgage from \$15,450,000.00 to \$19,950,000.00, an increase of \$4,500,000.00 ( $\$4,500,000.00 \times .10 = \$450,000.00$ ).
32. It therefore appears that there should be priority to the perfected lien claimants of up to \$1,950,000.00 unless the mortgages were not fully advanced to the borrowers.

**ISSUES RE: ADVANCES**

33. Fernwood has claimed in its Statement of Claim that MZ had additional security other than its mortgages. This included a General Assignment of Leases and Rents as well as a General Security Agreement and Personal Guarantees (paragraph 13). I do not know how much of the mortgage advance was used to pay costs associated with this other security.



34. Fernwood further has claimed in paragraph 19 of its Statement of Claim, Exhibit "B" to my Affidavit that MZ failed or refused to advance funds under its mortgage (paragraph 19).

35. Fernwood further alleges that MZ interfered with the project and in particular the marketing and rental of units. This included requiring Fernwood to make the payment of \$991,240.18 inclusive of H.S.T. to Keller, Williams, a Real Estate Broker that had been the listing agent and property manager of the property for Fernwood until MZ demanded that Fernwood replace Keller, Williams with another company known as Pensio Group.

36. It therefore appears that at least \$991,240.18 of the mortgage advance that was borrowed to pay for improvements were not actually used for improvements and were instead used to enable MZ to replace Keller, Williams with another agent of their choice.

37. Fernwood claimed that MZ required it to enter into a contract with the Pensio Group of Companies and that Pensio received all rent income from the condo units still owned by Fernwood from January 1, 2018. This was despite the fact that some of the mortgage monies were used to pay rental insurance premiums to Pensio on unsold units. Fernwood claims that but for MZ demands the money could have been used to pay for construction purposes (paragraph 28, Exhibit "B").

38. It therefore appears that much of the MZ mortgage loans that were supposed to be used to pay for construction work were not used for improvements and were in fact used for MZ's purposes.

39. MZ allegedly has a long standing relationship with Pensio and Fernwood has claimed MZ interfered with this project to advance its own interests and those of Pensio at the expense of the lien claimants (paragraph 34-45, Exhibit "B").

40. It therefore appears that well over \$1,000,000.00 of the mortgage advance was paid out for purposes other than making improvements and these monies were paid out as MZ directed for its own benefit.

41. I therefore claim that MZ was more than just a mortgagee on this project. I claim that MZ fits within the definition of an owner under section 1(1) of the *Construction Lien Act* in that MZ had an interest in the land, that it requested certain improvements to the mortgaged premises and because the improvements were made upon the credit of MZ, with the privity and consent of MZ and for its direct benefit.

42. I therefore claim that MZ as a mortgagee has committed acts of an owner and has therefore lost any priority it had over the lien claimants including my company.

43. My lawyer specifically asked counsel for the Receiver to obtain and provide the details of all advances under the mortgage.

44. My lawyer wrote in an email to Mr. Jeff Larry dated January 26, 2021, in which my lawyer asked for evidence of the advances paid out. A copy of this email is attached at Tab M. page 209-212. Another copy is reproduced as Exhibit "C" to my Affidavit.

45. In response on February 4, 2021, Mr. Larry provided a Preliminary Trust Advance Statement that indicated that a total of \$12,695,000.00 was expected to be advanced to Fernwood by MZ by December 15, 2016. It appears that \$11,917,503.09



of this amount was to be paid to MarshallZehr to pay out an existing mortgage. The date of that earlier mortgage does not appear to be identified. A further \$513,063.27 of the mortgage was withheld by MZ in trust. A copy of a document from Mr. Larry attached to his email letter dated February 4, 2021, that refers to these amounts is Exhibit "D" to my Affidavit.

46. Mr. Larry also sent my lawyer another document as an attachment to his email of February 4, 2021, that indicates there was an advance to Fernwood was on December 12, 2016. A copy of this document that indicates that \$8,730,000.00 was advanced to Fernwood on December 12, 2016, is Exhibit "E" to my Affidavit. It is not clear if this was the value of the land at the time of the original advance.

47. However, since my company first started work on site on March 30, 2016, it appears that none of the advances were actually advanced before my company's construction lien arose.

48. I note that Mr. Larry has tried to suggest that my construction lien was registered out of time. I believe there is no reasonable basis for this claim. I question why Mr. Larry made this allegation without first requesting information from me or my counsel.

49. I therefore do not believe that the Receiver has acted reasonably in dealing with my company's lien claim. I therefore ask for leave to proceed with my law suit in which I claim priority over MarshallZehr 's mortgage. I also ask that this lien action proceed in Barrie.

*AFFIDAVIT OF ROBERT DUNCAN*

50. I am also opposed to any request by RSM for payment of its fees claimed for its work or for payment of its counsel's legal costs. I believe they have failed to carry out their responsibilities to the creditors of Fernwood in an even handed and reasonable manner and that they have claimed a great deal in fees which I claim are excessive and unreasonable.

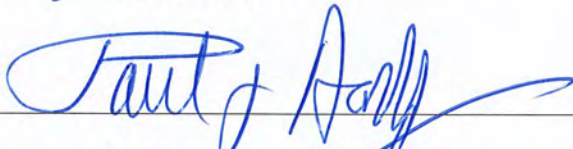
51. I do not oppose the transfer of the property by a Vesting Order provided that the full amount of my lien claim plus security for my costs are paid into Court.

52. I therefore ask for an Order requiring RSM or Fernwood to pay monies into Court the amount of \$251,700.49 and I ask for an Order lifting the stay and granting my company leave to continue my construction lien action at Barrie.

53. I also ask for an Order requiring RSM to pay my costs of this motion and for having to have my counsel participate in this Commercial Court Application in an amount to be fixed and payable forthwith.

I make this Affidavit for no improper purpose.

**SWORN BEFORE ME** at the  
City of Barrie, in the County of Simcoe,  
this 5 day of May, 2021



Commissioner for Taking Affidavits  
(or as may be)

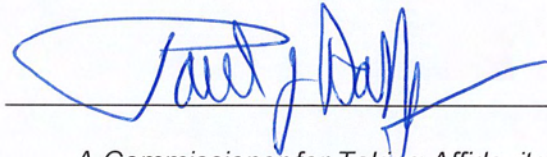
PAUL J. DAFFERN,



**Robert Duncan**



This is **Exhibit "A"** referred to in the Affidavit of **Robert Duncan** sworn before me this 5th day of May, 2021.

A handwritten signature in blue ink, appearing to read "Paul J. Kelly", written over a horizontal line.

*A Commissioner for Taking Affidavits, etc.*

**PAUL J. DAFFERN**  
LAW FIRM

---

July 24, 2020

**BY EMAIL TO: jeff.larry@paliareroland.com**

Paliare, Roland, Rosenberg, Rothstein LLP  
35<sup>th</sup> Floor, 155 Wellington Street West  
Toronto, ON M5V 3H1

ATTENTION: Mr. Jeff Larry

Dear Sir:

**RE: 1267989 Ontario Inc. o/a Duncan Drywall v. Fernwood Developments  
(Ontario) Corporation, et al.**

**RE: Barrie Court File No. CV-20-00000641-0000**

**My File No. 5204**

**My Client: 1267989 Ontario Inc. o/a Duncan Drywall**

**Your Client: RSM, Receiver for Fernwood Developments (Ontario) Corporation**

---

Mr. Sam Rappos of Chaitons LLP wrote an email to me on July 3, 2020 asking me to send you documentation and information regarding the work my client did on lands owned by Fernwood Developments (Ontario) Corporation ("Fernwood") in support of my client's claim for lien. My client is prepared to do this on a without prejudice basis to its rights to seek leave to proceed with its claims in court.

My client was a drywall contractor and it first started work on Fernwood Developments site on March 30, 2016. This was work on Building 5. Work on Building 6 began on April 28, 2016. Work on the sales pavilion began in May 2016. Work on Building 3 began April 17, 2017 and on Building 4 on June 4, 2017.

My client's last date on site was on January 30, 2020. It was on this date my client demobilized from Fernwood's lands. My client left the site after Jordan Zukowski advised that Fernwood was unable to arrange for additional financing to pay my client and to complete the project.

My client was owed \$178,195.00 plus HST as of January 30, 2020 not including the costs of demobilizing from the site.



My client registered its Claim for Lien on March 5, 2020 as Instrument No. SC1666408 in the LRO at Barrie. The amount claimed was \$178,195.00. A copy of that document is attached.

My client electronically issued a Statement of Claim, Barrie Court File NO. CV-20-00000641-0000 on April 7, 2020. A copy of the Statement of Claim is also attached. In the Statement of Claim my client added RSM Canada Limited and Marshall Zehr Group Inc. as defendants. My client claimed priority over Marshall Zehr Group Inc.'s mortgage. My client further claimed \$275,573.92 plus HST on \$188,195.00.

My client claims that \$188,195.00 was the balance it was owed after demobilization as well as interest at 2 per cent per month calculated monthly as per the interest rate specified for overdue accounts that Fernwood is liable to pay. The demobilization claim is for \$10,000.00 plus HST.

The Plaintiff also issued a Certificate of Action on April 7, 2020 to perfect its lien claim. The Certificate was registered as Instrument No. SC1673183 registered in the LRO at Barrie.

After this Certificate was registered the Statement of Claim was served on RSM and on Marshall Zehr Group Inc. RSM consented to the commencement of this action and to my client taking the necessary steps to perfect its lien claim. But RSM did not consent to this action proceeding further. This consent was given in writing on April 17, 2020. Neither a Statement of Defence nor a Notice of Intent to Defend was served by any of the Defendants.

Mr. Sam Rappos of Chaiton's LLP then communicated with me about discontinuing my client's action against RSM. My client agreed to do so and RSM consented to this discontinuance on a without costs basis. The Notice of Discontinuance is dated April 21, 2020.

Mr. Rappos formally admitted service of my client's Statement of Claim on behalf of the Defendants on April 20, 2020, the day before my client discontinued against RSM. A copy of this admission of service is also enclosed.

In my review of affidavits sworn in the Receivership Application made in the Commercial Court at Toronto, I read that Marshall Zehr Group ("MZG") originally granted a mortgage over Fernwood's lands in 2013. That mortgage was for \$15,000,000.00 and was registered as Instrument No. SC110734 in the LRO at Barrie. I have not enclosed a



copy of that mortgage. A copy of it may be found at page 85 of the January 31, 2020 Application Record in Toronto Court File CV-20-00635523-00 CL. However the Affidavit of Murray Snedden indicates that this mortgage was amended three times between December 5, 2013 and August 23, 2016.

The mortgage was divided into different Tranches. It is also clear that construction had started on site before this mortgage was fully advanced. Mr. Snedden deposed at Page 12, paragraph 8 that MZG provided financing to purchase the land, service the property and to complete construction of the development on the property. It therefore appears that the construction lien rights arose before the original mortgage was advanced.

In addition, it appears clear that MZG was required to maintain a 10 per cent Construction Lien Holdback from all advances under the mortgage from the time of the first advance. Therefore there should be more than sufficient holdback monies available to pay my client in full together with its legal costs.

It is also clear that MZG agreed to refinance the mortgage by September 20, 2016. (Pages 28-68) of Application Record dated January 31, 2020. At page 30 of the Record that the initial advance on the refinancing was for \$15,180,000.00 to pay out the original mortgage loan.

The mortgage was amended again on May 17, 2017 to increase the mortgage to \$19,950,000.00. This also increased the mortgage funding for hard construction costs from \$10,000,000.00 to \$14,553,653.00. This offer was accepted on May 18, 2017. Therefore the Construction Lien Holdback should have been \$1,995,000.00 as of May 18, 2017.

I further note that MZG's counsel relied upon the September 20, 2016 Commitment Letter in its demand letter dated January 21, 2020 to Fernwood to demand repayment of a \$19.95 million dollar loan from the borrower (page 267 January 31, 2020 Application Record).

Mr. Snedden also deposed in his Affidavit sworn on January 30, 2020 in support of MZG's Application to have RSM appointed as Fernwood's Receiver, at page 12 of the Record, page 3 of the Affidavit, paragraph 10.

"By September 2016, the development was site plan approved and the construction of the development was underway."



Mr. Snedden goes on to depose that it was apparent by September 2016 that Fernwood needed to borrow more money to finance this construction and that is why the mortgage was amended by the Commitment Letter dated "September 20, 2016" Page 12, Paragraph 11.

As you know MZG made a motion returnable on July 7, 2020 in which it sought approval of the first report of the Receiver dated June 20, 2020. Your client's first report is at Tab 2 of the MZG and RSM Motion Record dated July 1, 2020. The motion also sought court approval of a sale process. Your client reported at page 6 of its first report, paragraph 12.

MZG provided a \$19.95 M mortgage loan pursuant to a  
Commitment letter dated September 20, 2016 as amended.

I believe that it is clear from reading your client's first report that no construction lien holdback was held back by MZG and/or by Fernwood. At paragraph 20 of the report your client indicated the bank balance in Fernwood's bank account was an overdraft of \$22.01 when RSM first contacted that bank.

It also appears that there has never been any dispute by Fernwood to the amounts invoiced by my client. Fernwood was actively trying to arrange for a refinancing to pay my client up to January 2020.

I have numerous back up documents for the amounts my client has invoiced including invoices from suppliers as well as time sheets for employees who worked on the buildings that were not completed. If you would like to review these documents, copies will be made available provided you undertake to pay for these copies. The estimated cost is approximately \$500.00 plus HST to have my law clerk scan and email the documents.

Perhaps it would be simpler for you to verify with Mr. Irwin Duncan, counsel for Fernwood that his client does not dispute my client's claims. Jordan Zukowski admitted in writing that my client was owed \$190,695.00 as of November 28, 2018. A copy of letter of direction re funds is enclosed.

I also enclose copies of the contracts dated April 17, 2017 and May 30, 2018.

I would also point out that Jordan Zukowski provided a cheque to my client on September 6, 2019 for \$85,000.00 that was apparently returned by his bank.



Also the first invoice my client issued was invoice number 2387 dated April 21, 2016 for \$40,680.00 which was paid on or about May 18, 2016. Your client should be able to locate that cheque in Fernwood's bank records. My client was advised at some point that the townhouse project was changed to Georgian Meadow but the original name was Barrie School House.

If you would like more documentation please advise me at your earliest convenience. However I want to make clear that my client will claim additional costs for any additional work either I or my law clerk's must do if you request additional documents such as copies of supplier's invoices, worker's time sheets and invoices.

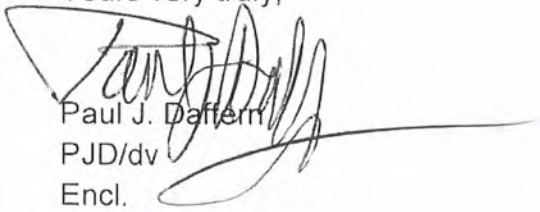
I believe there is ample evidence to substantiate my client's claims. I have not attempted to provide you with a total for my client's legal costs to date. However I submit my client is entitled to claim a security interest for costs up to \$50,000.00 in this case because 25% of the lien claim exceeds \$50,000.00. At this point I expect my client's claim for legal costs will be approximately \$25,000.00 plus HST and disbursements. The disbursements are expected to be in the range of \$1,500.00. I was called to the Bar in 1988 and have been practising law for 32 years.

My client claims priority over MZG's mortgage for the full amount of its lien claim of \$188,195.00 plus HST and costs to be agreed upon or determined by the Court.

My client also claims prejudgment interest on its claim from MZG from January 30, 2020, the last day my client's forces were on site.

My client offers to limit its interest claim on a without prejudice basis to my client's claims against the officers and directors of Fernwood for breach of trust of the Construction Lien Holdback and Trust provisions. My client's claim against the officers and directors would be made in a separate proceeding that your client would not be a party to, if my client decides to pursue those claims.

Yours very truly,

  
Paul J. Daffern

PJD/dv

Encl.

cc: client



# Schedule "B"

LRO # 51 Construction Lien

Received as SC1666408 35 4/20/13 05 at 15:35

The applicant(s) hereby applies to the Land Registrar

www.mhi.ca Page 1 of 1

## Properties

**PIN** 58831 - 1862 LT  
**Description** PART OF BLOCK 9, PLAN 51N983, PART 3 PLAN 51R40027, SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 AS IN SC1189600 TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1354411, SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1354411, SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1496430 TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1496430 CITY OF BARRIE  
**Address** BARRIE

## Consideration

**Consideration** \$178,195.00

## Claimant(s)

**Name** 1267989 ONTARIO INC  
**Address for Service** 1160 Snow Valley Road  
Minesing, ON L9X 1J4

I am the lien claimant and the facts stated in the claim for lien are true  
I, Cory West, Vice President, have the authority to bind the corporation  
This document is not authorized under Power of Attorney by this party

## Statements

Name and Address of Owner Fernwood Developments (Ontario) Corporation, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
Name and address of person to whom lien claimant supplied services or materials Fernwood Developments (Ontario) Corporation, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1 Time within which services or materials were supplied from 2017/04/17 to 2020/01/30 Short description of services or materials that have been supplied drywall installation and related services Contract price or subcontract price 240,000.00 plus HST Amount claimed as owing in respect of services or materials that have been supplied 178,195.00 plus HST

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule. The Lien Claimant is 1267989 Ontario Inc. carrying on business as Duncan Drywall

## Signed By

Dawn Dianna Viveiros 48 High St acting for Signed 2020-03-05  
Barrie Applicant(s)  
L4N 1W4

Tel: 705-725-9670

Fax: 705-725-8764

I have the authority to sign and register the document on behalf of the Applicant(s)

## Submitted By

PAUL J DAFFERN & ASSOCIATES 48 High St 2020-03-05  
Barrie  
L4N 1W4

Tel: 705-725-9670

Fax: 705-725-8764

## Fees/Taxes/Payment

**Statutory Registration Fee** \$65.05  
**Total Paid** \$65.05

**Properties**

**PIN** 58831 - 1862 LT

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

**Address** BARRIE

**Party From(s)**

**Name** 1267989 ONTARIO INC.

**Address for Service** 1160 Snow Valley Road  
Minesing, ON L9X 1J4

I, Rob Duncan, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Statements**

This document relates to registration number(s)SC1666408

Schedule: See Schedules

**Signed By**

Dawn Dianna Viveiros 48 High St. acting for Signed 2020 04 07  
Barrie Party From(s)  
L4N 1W4

Tel 705-725-9670

Fax 705-725-8764

I have the authority to sign and register the document on behalf of the Party From(s).

**Submitted By**

PAUL J DAFFERN & ASSOCIATES 48 High St. 2020 04 07  
Barrie  
L4N 1W4

Tel 705-725-9670

Fax 705-725-8764

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$65.05

**Total Paid** \$65.05





Court File No./N° du dossier du greffe: CV-20-00000641-0000

FOF

**STATE OF ACTION UNDER SECTION 36 OF THE ACT**

*Construction Act*

\_\_\_\_\_  
Court File No.

**ONTARIO**

Electronically issued : 07-Apr-2020  
Délivré par voie électronique  
Barrie

**SUPERIOR COURT OF JUSTICE**

1267989 ONTARIO INC. o/a DUNCAN DRYWALL

Plaintiff(s)

(court seal)

and

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION, RSM CANADA  
LIMITED and MARSHALLZEHR GROUP INC.

Defendant(s)

**CERTIFICATE OF ACTION**

I certify that an action has been commenced in the Superior Court of Justice under the *Construction Act* between the above parties in respect of the premises described in Schedule A to this certificate, and relating to the claim(s) for lien bearing the following registration numbers:

SC1666408

Date: April 7, 2020

\_\_\_\_\_  
(registrar or local registrar)

**SCHEDULE A**

Description of premises:

PIN: 58831-1862 LT

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

Address: Barrie

\_\_\_\_\_  
(The description of the premises must be the same as in the statement of claim, and must be sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be.)



Court File No./N° du dossier du greffe: CV-20-00000641-0000

Court File No

ONTARIO  
SUPERIOR COURT OF JUSTICE

Electronically issued : 07-Apr-2020  
Délivré par voie électronique  
Barrie

THE MATTER OF the *Construction Lien Act*,  
R S O 1990, c. C 30 as amended

BETWEEN

1267989 ONTARIO INC. o/a DUNCAN DRYWALL

Plaintiff/Contractor

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION,  
RSM CANADA LIMITED and MARSHALLZEHR GROUP INC.

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiffs does not have a lawyer, serve it on the Plaintiff and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.



IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

(Where the claim made is for money only, include the following.)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 7, 2020

Issued by \_\_\_\_\_  
Local Registrar

Address of court office:  
75 Mulcaster Street  
Barrie, Ontario L4M 3P2

TO: **FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION**  
490 York Road, Building E, Unit 1  
Guelph, Ontario N1E 6V1

Defendant

AND TO: **RSM CANADA LIMITED**  
11 King Street West  
Suite 700, Box 27  
Toronto, Ontario M5H 4C7

Defendant

AND TO: MARSHALLZEHR GROUP INC.  
465 Phillip Street Suite 206  
Waterloo, Ontario N2L 6C7

Defendant



CLAIM

1 The Plaintiff 1267989 Ontario Inc. o/a Duncan Drywall, hereinafter referred to as ("Duncan Drywall") claims:

- a) Payment of \$272 573.92 plus HST on \$188 195.00;
- b) Prejudgment interest from February 12, 2020 at the rate of 2% per month calculated monthly in accordance with the terms of a contract between the Plaintiff and Fernwood Development (Ontario) Corporation.
- c) Postjudgment interest at the rate of 2% per month in accordance with the contract between the Plaintiff Contractor and the Defendant Owner.
- d) A Construction Lien on the Premises described in a Construction Lien registered by the Plaintiff of March 5, 2020, as instrument number SC1666408 on the Owner's lands and buildings known by Property ID number 58831-1862LT and as further described in further detail in Schedule A to the Statement of Claim.
- e) An Order for the sale of the Defendant's lands in order to pay the Plaintiff's Construction Lien and such further directions as may be required to pay the Plaintiff's Construction Lien.
- f) An Order granting the Plaintiff priority over the Defendant Mortgagee's mortgage registered as Instrument SC1107324 in favour of MarshallZehr Group Inc.
- g) An Order granting the Plaintiff priority over the claims of RSM Canada Limited the Receiver Manger of the Defendant Owner Fernwood Developments (Ontario) Corporation.

- h) In the alternative, prejudgment and postjudgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended
    - i) Costs of this action
    - j) Such further relief as this Honourable Court deems just
- 2. The Plaintiff was at all material times a drywall and taping contractor that operates in Springwater, Ontario and that contracted directly with the Defendant Owner, Fernwood Developments (Ontario) Corporation to install drywall and tape in a stacked townhouse phased condominium complex for residential purposes under the Condominium Act, 1998 (Ontario) known by the project name "School House Barrie" (formerly known as "Georgian Meadows").
- 3. The Defendant Owner, Fernwood Developments (Ontario) Corporation "the Owner" was at all material times a land developer and construction company that operated from offices in Guelph, Ontario.
- 4. The Defendant RSM Canada Limited "the Receiver" was appointed as the Receiver Manger of the Owner by a Court Order made in the Commercial Court at Toronto on February 12, 2020 pursuant to an unopposed Application made by MarshallZehr Group Inc.
- 5. The Defendant MarshallZehr Group Inc. holds a mortgage on the Defendant Owner's lands with a face value of \$15,000,000.00. MarshallZehr Group Inc. "the mortgagee" claimed in its Application to have a Receiver appointed that it is owed approximately \$24,000,000.00 on its mortgage
- 6. The Plaintiff provided construction materials and services to the Owner from April 17, 2017 until January 30, 2020 when the Owner admitted that it could not pay the Plaintiff for the services and materials it had provided



7. The Plaintiff invoiced the Owner for \$178,195.00, plus HST, that wasn't paid for prior to January 30, 2020 that had not been paid by the Owner. Although the Owner made some payments there was still a balance of \$178,195.00 plus HST owed as of January 30, 2020.
8. The Plaintiff provided another \$10,000.00 plus HST on services that were not billed for by January 30, 2020 when the Plaintiff demobilized from the Owner's project site.
9. These services included preparation and planning work done off site that added value to the Owner's lands.
10. On or about January 30, 2020 the President of the Owner, Jordan Zurkowski, informed Mr. Robert Duncan, the President of the Plaintiff, that the Owner's attempts to refinance and/or sell the project had failed and that the Owner would not be able to pay the Plaintiff for the balance owed on the invoices.
11. On February 12, 2020 MarshallZehr Group Inc. brought an Application in the Commercial Court at Toronto to have RSM Canada Limited appointed as the Receiver Manager of the Owner.
12. MarshallZehr Group Inc.'s Application gave evidence to the Commercial Court on this by way of an Affidavit sworn by the Chief Financial Officer ("CFO") of the Mortgagee, sworn on January 30, 2020, that the Mortgagee was owed approximately \$24,000,000.00 and that it had amended its mortgage by letter agreements dated May 17, 2017, April 17, 2018 and on September 5, 2018 increasing the loan to \$19.95 Million Dollars which was more than a year after the Plaintiff commenced work on the Owner's project.

13. The Plaintiff therefore claims priority pursuant to the *Construction Lien Act* over MarshallZenr Group Inc.'s mortgage and any claims against the Owner's land made by RSM Canada Limited.
14. The Plaintiff claims it is entitled to a Construction Lien for \$178,195.00 plus HST and its costs and for all other relief necessary to recover the monies owed on this lien, including an Order for priority and for sale and for all necessary directions by the Court to recover its lien monies.
15. The Plaintiff claims that the Owner agreed to pay it two (2) per cent per month in interest on any invoice not paid within 30 days of the date of the invoice. The interest on these overdue accounts was \$76,354.65 as of February 12, 2020. The Plaintiff therefore claims this interest as well as the amounts claimed in its Construction Lien and the amount owed for unbilled work done up to January 30, 2020.
16. The Plaintiff further claims prejudgment and postjudgment interest on its lien claim and on the balance owed to it for unbilled work as of January 30, 2020.
17. The Plaintiff further claims prejudgment interest and postjudgment interest in accordance with the terms of its contract with the Owner at 2% per year both before and after Judgment.
18. The Plaintiff claims, in the alternative, prejudgment and postjudgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
19. The Plaintiff further claims leave to issue and register a Certificate of Action and to register it on title to the Plaintiff's lands identified by Property Identification Number (PIN) 58831-1882(LT) as described in Schedule A to this Statement of Claim.



- 20 The Plaintiff further claims its costs of this action and with respect to the registration of its Construction Lien dated January 30, 2020, a copy of which is attached as Schedule B to the Statement of Claim
- 21 The Plaintiff claims this relief from the Defendants on a joint and several basis
- 22 The Plaintiff proposes that this action be tried at Barrie, Simcoe County

Date: April 7, 2020

**PAUL J. DAFFERN LAW FIRM**  
Barristers & Solicitors  
48 High Street  
Barrie, Ontario L4N 1W4

**PAUL J. DAFFERN**  
LSO#28383M  
Tel: 705-725-9670  
Fax: 705-725-8764  
paul.daffern@daffernlaw.com

Lawyer for the Plaintiff/Contractor

SCHEDULE "A"

Description of Premises:

PIN: 58831-1862 LT

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

Address: Barrie



The applicant(s) hereby applied to the Land Registrar

www.lmrr.ca Page 1 of 1

**Properties**

**Pin:** 53831 - 1862 - LT  
**Description:** PART OF BLOCK 5 PLAN 51M983, PART 3 PLAN 51R40027 SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 AS IN SC1189600, TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1354411, SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1354411, SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1496430 TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1496430 CITY OF BARRIE  
**Address:** BARRIE

**Consideration**

**Consideration:** \$178,195.00

**Claimant(s)**

**Name:** 1267989 ONTARIO INC.  
**Address for Service:** 1160 Snow Valley Road  
 Mississauga, ON L9X 1J4  
 I am the lien claimant and the facts stated in the claim for lien are true.  
 I, Cory West, Vice President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Statements**

**Name and Address of Owner:** Fernwood Developments (Ontario) Corporation, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
**Name and address of person to whom lien claimant supplied services or materials:** Fernwood Developments (Ontario) Corporation, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
**Time within which services or materials were supplied:** from 2017/04/17 to 2020/01/30  
**Short description of services or materials that have been supplied:** drywall installation and related services  
**Contract price or subcontract price:** 240,000.00 plus HST  
**Amount claimed as owing in respect of services or materials that have been supplied:** 178,195.00 plus HST  
 The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule. The Lien Claimant is 1267989 Ontario Inc. carrying on business as Duncan Drywall

**Signed By**

**Name:** Dawn Dianna Viveiros  
**Address:** 48 High St, Barrie, L4N 1W4  
**acting for:** Applicant(s)  
**Signed:** 2020-03-05  
**Tel:** 705-725-9670  
**Fax:** 705-725-8764  
 I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

**Name:** PAUL J DAFFERN & ASSOCIATES  
**Address:** 48 High St, Barrie, L4N 1W4  
**Date:** 2020-03-05  
**Tel:** 705-725-9670  
**Fax:** 705-725-8764

**Fees/Taxes/Payment**

**Statutory Registration Fee:** \$65.05  
**Total Paid:** \$65.05

Court File No

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT

BARRIE

STATEMENT OF CLAIM

PAUL J. DAFFERN LAW FIRM  
Barristers & Solicitors  
48 High Street  
Barrie, Ontario L4N 1W4

PAUL J. DAFFERN  
LSO#28383M  
Tel: 705-725-9670  
Fax: 705-725-8764  
paul.daffern@daffernlaw.com

Lawyer for the Plaintiff/Contractor



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF** the *Construction Lien Act*,  
R.S.O. 1990, c. C.30, as amended

B E T W E E N:

1267989 ONTARIO INC. o/a DUNCAN DRYWALL

Plaintiff/Contractor

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION,  
RSM CANADA LIMITED and MARSHALLZEHR GROUP INC.

Defendants

**NOTICE OF DISCONTINUANCE**

The plaintiff wholly discontinues this action as against the Defendant, RSM Canada Limited, without costs.

Date: April 21, 2020

**PAUL J. DAFFERN LAW FIRM**

Barristers & Solicitors  
48 High Street  
Barrie, Ontario L4N 1W4

**PAUL J. DAFFERN**

LSO#28383M  
Tel: (705) 725-9670  
Fax: (705) 725-8764  
paul.daffern@daffernlaw.com

Lawyer for the Plaintiff/Contractor

**TO: CHAITONS LLP**

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

**SAM RAPPOS**

LSO #51399S  
Tel: (416) 218-1137  
Fax: (416) 218-1844  
samr@chaitons.com

Lawyer for the Defendant,  
RSM Canada Limited

NOTE: If there is a counterclaim, the defendant should consider rule 23.02, under which the counterclaim may be deemed to be discontinued.

NOTE: If there is a crossclaim or third party claim, the defendant should consider rule 23.03, under which the crossclaim or third party claim may be deemed to be dismissed.



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT

BARRIE

**NOTICE OF DISCONTINUANCE**

**PAUL J. DAFFERN LAW FIRM**  
Barristers & Solicitors  
48 High Street  
Barrie, Ontario L4N 1W4

**PAUL J. DAFFERN**  
LSO#28383M  
Tel: 705-725-9670  
Fax: 705-725-8764  
paul.daffern@daffernlaw.com

Lawyer for the Plaintiff/Contractor

and

FERNWOOD DEVELOPMENT INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN DIEGO  
 STATE OF CALIFORNIA, Plaintiff  
 vs.  
 PAUL J. DUFFAN, Defendant  
 Case No. 2019-0001-0000-0000

Service of a true copy of the Statement of Claim  
 is accepted on behalf of the Defendants this  
 20th day of April, 2020.

*Sam Rappos*

per: Sam Rappos  
 Chaitons LLP  
 Lawyers for the Defendants





November 30, 2018

1267989 Ontario Inc. (Duncan Drywall)  
1160 Snow Valley Road  
Minesing, Ontario L9X 1J4

**Re: Fernwood Developments (Ontario) Corporation  
Simcoe Standard Condominium Plan No. 420  
Sales of 17 Units, School House, Barrie  
242, 244, 246, 248, 250, 252 Penetanguishene Road, City of Barrie**

In connection with the above-noted transactions to be completed between January 9, 2019 to January 31, 2019, we confirm receipt of the enclosed executed Letter of Direction Re Funds, dated November 30, 2018 and signed by Fernwood Developments (Ontario) Corporation.

We trust that you find the above to be in order.

Yours very truly,  
**SMITHVALERIOTE LAW FIRM LLP**

Lisa M. Gazzola, B.A., LL.B.  
LMG/cg

Enclosure

direct line: 519-821-0014  
email: lgazzola@smithvaleriotelaw.com  
assistant: cgreer@smithvaleriotelaw.com

Reply to Guelph Office:

MAILING ADDRESS

P.O. Box 1240, Guelph, ON N1H 6N6

ADDRESS

105 Silvercreek Pkwy. N., Suite 100, Guelph, ON N1H 6S4  
T 519 837 2100 TF 800 746 0685 F 519 837 1617

Reply to Fergus/Elora Office:

MAILING ADDRESS

P.O. Box 128, Fergus, ON N1M 2W7

ADDRESS

294 East Mill Street, Unit 108, Centre Wellington, ON N0B 1S0  
T 519 843 1960 F 519 843 6888

To: Lisa Gazzola  
SmithValeriotte Law  
105 Silvercreek Pkwy N #100  
Guelph, ON N1H 6S4

Re: Fernwood Developments (Ontario) Corporation  
School House, Barrie  
242, 244, 246, 248, 250, 252 Penetanguishene Road, Barrie

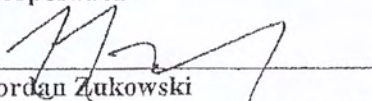
---

## Letter of Direction Re Funds

YOU ARE HEREBY DIRECTED to pay out of the net sales funds of 17 Inventory Units remaining at 242, 244, 246, 248 Penetanguishene Road, Barrie Ontario, all scheduled to close between Jan 9<sup>th</sup> 2019 to Jan 31, 2019, the sum of monies up to \$190,695.00 Cdn Dollars (based upon invoices presented) to 1267989 Ontario Inc., operating as Duncan Drywall, 1160 Snow Valley Road, Minesing Ontario L9X 1J4, Ontario and this shall serve as your good and sufficient authority for so doing.

DATED at Guelph, Ontario this 28<sup>th</sup> day of November, 2018

Fernwood Developments (Ontario)  
Corporation

  
\_\_\_\_\_  
Jordan Zukowski  
President, I have authority to bind the  
Corporation



QT.#.	Q1001815
PO/CO#	/
Date	May 29, 2018
JOB#	

To: **Fernwood Developments (Ontario) Corpor**  
5556 5th Line  
Rockwood,  
Phone: 513-362-0543

The Following Work: **School House Bldg #1**

The following price is to supply and install materials as per Rob's site visit:

SUPPLY AND INSTALL ALL INSULATION, DRYWALL AND TAPE INCLUDING BOXING, BIN SUPPLIED BY OTHERS \$240,000.00

THANK YOU FOR THE OPPORTUNITY TO QUOTE THIS JOB

PRICES ARE GOOD FOR 30 DAYS, AFTER 30 DAYS PRICES ARE SUBJECT TO CHANGE DUE TO MATERIAL AND/OR LABOUR INCREASES

**Notes: \*Price is based on all work being completed in 1 phase. If return trips are required due to areas not ready, all return trips will be on a time and material basis at an hourly rate of \$50/hour/man plus travel.**

**Total: \$240,000.00** +Applicable Taxes

AUTHORIZED BY: Jordan  
ON BEHALF OF: Fernwood Developments (Ontario) Corporation  
ESTIMATOR: Robert Duncan

STATUTORY DECLARATION

CANADA ) IN THE MATTER OF
) a Contract between Fernwood
PROVINCE OF ONTARIO ) Developments (Ontario) Corporation
) ("Fernwood) and
)
) 1267989 Ontario Inc
) company name (the "Contractor")

I, Robyn Duncan, of Barrie, in the Province of Ontario
(name) (city)

DO SOLEMNLY DELARE THAT:

- 1. I am the General Manager (position - Owner, President, General Manager etc ) of the Contractor operating as Duncan Drywall, a contractor to Fernwood on the Georgian Meadows construction project located in Barrie, Ontario (the "Project").
2. As of this date, the amount of \$ 178,195.00 (outstanding amount) is due and owing from Fernwood to the Contractor in respect of the Project.
3. I herby certify that all previous amounts invoiced have been paid and that there are no monies outstanding.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that is of the same force and effect as if made under oath.

DECLARED BEFORE ME
at the City of Barrie
in the Regional Municipality
of Simcoe
this 6 day of December, 2019

Handwritten signature of Robyn Duncan

Signature of Bryony Buchanan
A Commissioner, etc.



# Independent Sub- Contractor Agreement

The School House, Barrie Ontario

This Agreement (the "Agreement") is made and entered into as of April day of 17<sup>th</sup>, 2017  
(the "Effective Date") between FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION (the  
"Company"), a limited liability company existing under the laws of the Province of Ontario and having its  
principal offices located at 5556 5<sup>th</sup> Line, Rockwood, ON and

Duncan Drywall

(the "Contractor")(collectively, the "Parties")

WHEREAS, the Company requests the Contractor to perform services as described within the Agreement and may request the Contractor to perform other services in the future; and

WHEREAS, the Company and the Contractor desire to enter into this Agreement, which will define the respective rights and duties as to all services to be performed;

WHEREAS, the Contractor affirms that they understand all of the provisions contained in this Agreement and in the case that they require clarification as to one or more of the provisions contained herein, they have requested clarification or otherwise legal guidance,

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Parties hereto agree as follows;

1. **Services** – Starting on the Effective Date and remaining in effect for the duration of this Agreement, the Contractor shall provide the Company with the following services, without limitation and shall be responsible for all tools and materials required to complete services, as noted in the attached Schedules.
2. **Contractor Representations and/or Warranties** – Starting on the Effective Date and remaining in effect for the duration of this Agreement, the Contractor and any of its Sub-Trades/Sub-Contractors makes the following representations and/or warranties,
  - They are fully authorized and empowered to enter into this Agreement and their performance of the obligations within this Agreement will not violate any agreement between the Contractor and any other person, firm or organization or any law or government regulation.
  - They are more than 18 years of age and not otherwise incapacitated at the time of this Agreement.
  - They will notify the Company of any change(s) to the Contractor's schedule that could adversely affect the availability of the Contractor, whether known or unknown at the time of this Agreement, no later than two (2) weeks prior to such change(s). If the Contractor

becomes aware of such change(s) within the two (2) week period, the Contractor shall promptly notify the Company of such change(s) within a reasonable amount of time.

- They will bear all expenses incurred in the performance of this Agreement, including but not limited to, the Contractor's original estimate and scope of work, noted in the Schedules attached hereto.
3. **Company Representations and/or Warranties** – Starting on the Effective Date and remaining in effect for the duration of this Agreement, the Company makes the following representations and warranties.
- That the Company is fully authorized and empowered to enter into this Agreement and that its performance of obligations under this Agreement will not violate any agreement between the Company and any other person, firm or organization or any law of government regulation.
  - That the Company is in full compliance with any and all laws and/or statutes applicable to the services described herein.
4. **Compensation** – The services performed by the Contractor shall be performed at the rate set forth and noted in the Schedules attached hereto, and shall not exceed the total estimated amount specified in the Schedules attached hereto. The Contractor shall be responsible for including any overtime and/or extras in their original estimate for services required to meet the completion date. Any overtime and/or extras that are deemed over and above the original estimate for services shall be presented to the company in writing for approval, prior to being implemented. The Company shall not be responsible for federal, provincial, local taxes or HST derived from the Contractor's net income or for the withholding and/or payment of any federal, provincial and local income and other payroll taxes, HST, workers' compensation, disability benefits or other legal requirements applicable to the Contractor.
5. **Independent Contractor Status** – The Contractor is an independent contractor of the Company. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal, agent, partnership or joint venture, or any other fiduciary relationship. The Contractor shall have no authority to act as an agent for, or on behalf of, the Company, or to represent the Company or bind the Company in any manner. The Contractor shall not be entitled to worker's compensation, retirement, insurance and/or other benefits afforded to employees of the Company.
6. **Confidential Information** – The Contractor and their employees shall not, during the time of rendering services to the Company or thereafter, disclose to anyone other than authorized employees of the Company or use for the benefit of the Contractor and their employees or for any entity other than the Company, any information of confidential nature, including but not limited to, information relating to; any such materials or intellectual property; any of the



Company projects or programs, the technical, commercial or any other affairs of the Company, or any confidential information which the Company has received from a third party.

7. **Intellectual Property** – The Contractor represents that all content provided by the Contractor to the Company, in furtherance of the services, specified in the Schedules attached hereto, including, without limitation, Images, videos and text, including any intellectual property, such as copyrights and/or trademarks (the “Content”), is owned solely and legally by the Contractor. The Contractor grants the Company a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any Content in connection with the services, specified in the Schedules attached hereto. Any materials developed by the Company, making use of the Content, remains the sole property of the Company, subject to all applicable laws and/or statutes. During the course of performing under this Agreement, the Contractor and its directors, officers, employees and/or any other representatives may, independently or in conjunction with the Company, develop information, produce work product or achieve other results for the Company in connection with the services it performs for the Company under this Agreement and as specified in the Schedules attached hereto. The Contractor agrees that any information, work product and/or other results, systems and information developed by the Contractor and/or the Company in connection with such services shall, to the extent permitted by law, be a “work made for hire” and shall remain the sole and exclusive property of the Company. Note that this provision shall have no effect on the status of the relationship between the Company and the Contractor, as set out in Section 6 of this Agreement.
8. **Liability** – The Company shall not be responsible for any costs incurred by the Contractor, including, without limitation, any and all fees and/or expenses, such as those described in Section 3 of this Agreement. The Company makes no guarantees regarding the physical and/or mental fitness of any Client. The Contractor shall perform services, as set out in this Agreement and specified in the Schedules attached hereto, at their own risk. Except with respect to the Parties indemnification obligations, neither party shall be liable to the other for any special, indirect, incidental, punitive or consequential damages arising from or related to this Agreement, including bodily injury, death, loss of revenue or profits or other benefits and claims by any third party, even if the Parties have been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including, without limitation to breach of contract, breach of warranty, negligence, strict liability and other torts.
9. **Insurance and WSIB** – the Company has Builders Risk insurance on this Project, through Intact Insurance, Policy # 501263712, and as such requires every Trade and Sub-Contractor/Sub-Trade to carry their own Liability Insurance with a minimum amount of \$2,000,0000 as shown in the Schedules attached hereto. Each Trade and Sub-Contractor/Sub-Trade shall also be enrolled under WSIB and provide the Company with a WSIB Clearance Certificate as shown in the Schedules attached hereto.

10. **Disclaimer of Warranty** – The warranties contained herein are the only warranties made by the Parties herein. Each party makes no other warranty, whether express or implied and expressly excludes and disclaims all other warranties and representations of any kind, including any warranties of merchantability, fitness for a particular purpose, title, and non-infringement. The Company does not provide any warranty that operation of any services herein will be uninterrupted or error-free.
11. **Indemnification** - The Contractor agrees to indemnify and hold harmless the Company, its affiliates and its respective officers, directors, agents and/or employees from any and all claims, demands, losses, causes of action, damage, lawsuits, judgements, including lawyer's fees and costs, arising out of, or in relation to, the Contractor's services in this Agreement and specified in Schedules attached hereto. This provision shall survive the duration of this Agreement. The Contractor agrees to defend against any and all claims, demands, causes of action, lawsuits, and/or judgements arising out of, or in relation to, the Contractor's services in this Agreement and specified in the Schedules attached hereto, unless expressly stated otherwise by the Company, in writing.
12. **Duration, Scope and Severability** – This Agreement shall take effect immediately and shall remain in full force and effect indefinitely or until terminated pursuant to Section 11 of this Agreement. The Company may terminate this Agreement for any reason upon forty eight (48) hour notice to the Contractor. Either party may terminate this Agreement for cause immediately upon notice to the breaching party. This Agreement and any Schedules, appendices, duplicates or copies attached hereto, form the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, agreements, representations and understandings of any kind, whether written or verbal, between the Parties, preceding the date of this Agreement. This Agreement may be amended only by written agreement duly executed by an authorized representative of each party. If any provision or provisions of this Agreement shall be held unenforceable for any reason, then such provisions shall be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement. No modifications to this Agreement shall be binding upon the Company without the express, written consent of the Company. This Agreement may not be assigned by either party without the express consent of the other party.
13. **Waiver of Rights** – A Failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.



14. **Agreement in Writing** – If there is a conflict or discrepancy between any provision added to this Agreement, including any Schedules attached hereto, and any provisions in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set portion to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire agreement between the Company and the Contractor. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

15. **Governing Law and Jurisdiction** -This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, without reference to any principles of conflicts of laws, which might cause the application of the laws of another Province. Any action instituted by either party arising out of this Agreement shall only be brought, tried and resolved in the applicable federal or provincial courts having jurisdiction in the Province of Ontario. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, PROVINCIAL AND FEDERAL, HAVING JURISDICTION IN THE PROVINCE OF ONTARIO.

Any amendment and/or waiver with respect to this Agreement, must be agreed to in writing to have any effect.

**The Schedules attached hereto form part of this Agreement,**

Schedule "A" Project Scope of Work

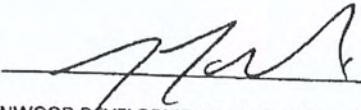
Schedule "B" Standard Specifications (by specific Trade)

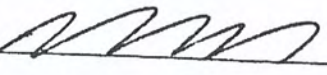
Schedule "C" Construction Drawings and Site Plan

Schedule "D" Trade Quotation, WSIB Clearance Certificate and Liability Insurance

Schedule "E" Site Rules and Regulations

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have each executed this Agreement as of the Effective Date.

Per  I have the authority to bind the Corporation  
FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION, the Company

Per  I have the authority to bind the Corporation  
\_\_\_\_\_, the Contractor

Per \_\_\_\_\_, the Witness

## Schedule A

### Project Scope of Work

#### Project Description:

The School House located at 85 Sydenham Wells Road in Barrie Ontario is a 376 bedroom purpose built Student Residence stacked townhouse complex catering to the upper market student clientele. Each of the 94 units will have 4 furnished bedrooms each having their own private ensuite bathrooms and all interior finishes will be higher end.

#### Start / Completion Dates:

- Start Date: subject to Building Permit availability and Building Department Inspections, April 20<sup>th</sup>, ~~2015~~
- Completion Date: Mid - July, ~~2015~~

#### Payment Terms:

- All Payments will be on a Net 30 day basis
- Invoices, including all Progress Invoices must be submitted, by the 15<sup>th</sup> of the month, for payment the following month by the 15<sup>th</sup>
- Pursuant to the terms of the Project Financing, all payments on this Project are subject to the statutory 10% construction lien holdback
- 2% discount on invoice if paid within 15-20 days from end of Month.



Schedule B

Specifications

Please attach Specifications for the job here

Block 3

Price as per quote.

# 203,500 plus HST.

\* inclusive

**Schedule C**

**Construction Drawings and Site Plan**

Please attach Construction Drawings and Site Plan drawings here

- Block 3 at 254 penetang. Rd. Barrie.
- Drawings Provided via email.



## Schedule E

### Site Rules and Regulations

#### SITE RULES AND REGULATIONS

1. Jordan Zukowski, President of Fernwood Developments (Ontario) Corporation, will act as the Site Supervisor. Jordan Zukowski – 519-362-0543 or [jordan.zukowski@gmail.com](mailto:jordan.zukowski@gmail.com)
2. Directions to the nearest Hospital and all Permit and Municipal Documents pertaining to this project are available at the site office, located on site at 85 Sydenham Wells Road in Barrie, Ont
3. All trades and suppliers are required to have authorization to be on site by Fernwood Developments (Ontario) Corporation.
4. All trades and suppliers are required to provide WSIB Clearance Certificates, to the site office and must be available at all times.
5. All trades and suppliers are required to follow all general safety rules set out by WSIB
6. All Trades and Suppliers must be familiar with and abide by the Occupational Health and Safety Act, , including wearing Hard Hats and Safety Boots at all times, and be properly tied off and secured with a safety harness when working on roofs,
7. All trades and suppliers are required to provide their own tools and material to complete the services required. Fernwood Developments (Ontario) Corporation will not be responsible for any tools or materials left on site by the contractor.
8. All trades and suppliers are required to keep a clean and safe work environment. All garbage and/or debris is to be cleaned and disposed of properly at the end of each working day.
9. All garbage and/or debris shall be relocated to \_\_\_\_\_ and be disposed of by \_\_\_\_\_

Contractors Signature \_\_\_\_\_

# Independent Sub- Contractor Agreement

## The School House, Barrie Ontario

This Agreement (the "Agreement") is made and entered into as of 30<sup>th</sup> day of May, ~~2015~~ <sup>2018</sup>  
(the "Effective Date") between FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION (the  
"Company"), a limited liability company existing under the laws of the Province of Ontario and having its  
principal offices located at 5556 5<sup>th</sup> Line, Rockwood, ON and

Duncan Drywall

(the "Contractor")(collectively, the "Parties")

WHEREAS, the Company requests the Contractor to perform services as described within the Agreement  
and may request the Contractor to perform other services in the future; and

WHEREAS, the Company and the Contractor desire to enter into this Agreement, which will define the  
respective rights and duties as to all services to be performed;

WHEREAS, the Contractor affirms that they understand all of the provisions contained in this Agreement  
and in the case that they require clarification as to one or more of the provisions contained herein, they  
have requested clarification or otherwise legal guidance,

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Parties  
hereto agree as follows;

1. **Services** – Starting on the Effective Date and remaining in effect for the duration of this Agreement, the Contractor shall provide the Company with the following services, without limitation and shall be responsible for all tools and materials required to complete services, as noted in the attached Schedules.
2. **Contractor Representations and/or Warranties** – Starting on the Effective Date and remaining in effect for the duration of this Agreement, the Contractor and any of its Sub-Trades/Sub-Contractors makes the following representations and/or warranties,
  - They are fully authorized and empowered to enter into this Agreement and their performance of the obligations within this Agreement will not violate any agreement between the Contractor and any other person, firm or organization or any law or government regulation.
  - They are more than 18 years of age and not otherwise incapacitated at the time of this Agreement.
  - They will notify the Company of any change(s) to the Contractor's schedule that could adversely affect the availability of the Contractor, whether known or unknown at the time of this Agreement, no later than two (2) weeks prior to such change(s). If the Contractor



becomes aware of such change(s) within the two (2) week period, the Contractor shall promptly notify the Company of such change(s) within a reasonable amount of time.

- They will bear all expenses incurred in the performance of this Agreement, including but not limited to, the Contractor's original estimate and scope of work, noted in the Schedules attached hereto.

3. **Company Representations and/or Warranties** – Starting on the Effective Date and remaining in effect for the duration of this Agreement, the Company makes the following representations and warranties.

- That the Company is fully authorized and empowered to enter into this Agreement and that its performance of obligations under this Agreement will not violate any agreement between the Company and any other person, firm or organization or any law of government regulation.
- That the Company is in full compliance with any and all laws and/or statutes applicable to the services described herein.

4. **Compensation** – The services performed by the Contractor shall be performed at the rate set forth and noted in the Schedules attached hereto, and shall not exceed the total estimated amount specified in the Schedules attached hereto. The Contractor shall be responsible for including any overtime and/or extras in their original estimate for services required to meet the completion date. Any overtime and/or extras that are deemed over and above the original estimate for services shall be presented to the company in writing for approval, prior to being implemented. The Company shall not be responsible for federal, provincial, local taxes or HST derived from the Contractor's net income or for the withholding and/or payment of any federal, provincial and local income and other payroll taxes, HST, workers' compensation, disability benefits or other legal requirements applicable to the Contractor.

5. **Independent Contractor Status** – The Contractor is an independent contractor of the Company. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal, agent, partnership or joint venture, or any other fiduciary relationship. The Contractor shall have no authority to act as an agent for, or on behalf of, the Company, or to represent the Company or bind the Company in any manner. The Contractor shall not be entitled to worker's compensation, retirement, insurance and/or other benefits afforded to employees of the Company.

6. **Confidential Information** – The Contractor and their employees shall not, during the time of rendering services to the Company or thereafter, disclose to anyone other than authorized employees of the Company or use for the benefit of the Contractor and their employees or for any entity other than the Company, any information of confidential nature, including but not limited to, information relating to; any such materials or intellectual property; any of the



Company projects or programs, the technical, commercial or any other affairs of the Company, or any confidential information which the Company has received from a third party.

7. **Intellectual Property** – The Contractor represents that all content provided by the Contractor to the Company, in furtherance of the services, specified in the Schedules attached hereto, including, without limitation, images, videos and text, including any intellectual property, such as copyrights and/or trademarks (the “Content”), is owned solely and legally by the Contractor. The Contractor grants the Company a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any Content in connection with the services, specified in the Schedules attached hereto. Any materials developed by the Company, making use of the Content, remains the sole property of the Company, subject to all applicable laws and/or statutes. During the course of performing under this Agreement, the Contractor and its directors, officers, employees and/or any other representatives may, independently or in conjunction with the Company, develop information, produce work product or achieve other results for the Company in connection with the services it performs for the Company under this Agreement and as specified in the Schedules attached hereto. The Contractor agrees that any information, work product and/or other results, systems and information developed by the Contractor and/or the Company in connection with such services shall, to the extent permitted by law, be a “work made for hire” and shall remain the sole and exclusive property of the Company. Note that this provision shall have no effect on the status of the relationship between the Company and the Contractor, as set out in Section 6 of this Agreement.
8. **Liability** – The Company shall not be responsible for any costs incurred by the Contractor, including, without limitation, any and all fees and/or expenses, such as those described in Section 3 of this Agreement. The Company makes no guarantees regarding the physical and/or mental fitness of any Client. The Contractor shall perform services, as set out in this Agreement and specified in the Schedules attached hereto, at their own risk. Except with respect to the Parties indemnification obligations, neither party shall be liable to the other for any special, indirect, incidental, punitive or consequential damages arising from or related to this Agreement, including bodily injury, death, loss of revenue or profits or other benefits and claims by any third party, even if the Parties have been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including, without limitation to breach of contract, breach of warranty, negligence, strict liability and other torts.
9. **Insurance and WSIB** – the Company has Builders Risk insurance on this Project, through Intact Insurance, Policy # 501263712, and as such requires every Trade and Sub-Contractor/Sub-Trade to carry their own Liability Insurance with a minimum amount of \$2,000,0000 as shown in the Schedules attached hereto. Each Trade and Sub-Contractor/Sub-Trade shall also be enrolled under WSIB and provide the Company with a WSIB Clearance Certificate as shown in the Schedules attached hereto.



10. **Disclaimer of Warranty** – The warranties contained herein are the only warranties made by the Parties herein. Each party makes no other warranty, whether express or implied and expressly excludes and disclaims all other warranties and representations of any kind, including any warranties of merchantability, fitness for a particular purpose, title, and non-infringement. The Company does not provide any warranty that operation of any services herein will be uninterrupted or error-free.
  
11. **Indemnification** - The Contractor agrees to indemnify and hold harmless the Company, its affiliates and its respective officers, directors, agents and/or employees from any and all claims, demands, losses, causes of action, damage, lawsuits, judgements, including lawyer's fees and costs, arising out of, or in relation to, the Contractor's services in this Agreement and specified in Schedules attached hereto. This provision shall survive the duration of this Agreement. The Contractor agrees to defend against any and all claims, demands, causes of action, lawsuits, and/or judgements arising out of, or in relation to, the Contractor's services in this Agreement and specified in the Schedules attached hereto, unless expressly stated otherwise by the Company, in writing.
  
12. **Duration, Scope and Severability** – This Agreement shall take effect immediately and shall remain in full force and effect indefinitely or until terminated pursuant to Section 11 of this Agreement. The Company may terminate this Agreement for any reason upon forty eight (48) hour notice to the Contractor. Either party may terminate this Agreement for cause immediately upon notice to the breaching party. This Agreement and any Schedules, appendices, duplicates or copies attached hereto, form the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, agreements, representations and understandings of any kind, whether written or verbal, between the Parties, preceding the date of this Agreement. This Agreement may be amended only by written agreement duly executed by an authorized representative of each party. If any provision or provisions of this Agreement shall be held unenforceable for any reason, then such provisions shall be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement. No modifications to this Agreement shall be binding upon the Company without the express, written consent of the Company. This Agreement may not be assigned by either party without the express consent of the other party.
  
13. **Waiver of Rights** – A Failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

14. **Agreement in Writing** – If there is a conflict or discrepancy between any provision added to this Agreement, including any Schedules attached hereto, and any provisions in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set portion to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire agreement between the Company and the Contractor. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

15. **Governing Law and Jurisdiction** -This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, without reference to any principles of conflicts of laws, which might cause the application of the laws of another Province. Any action instituted by either party arising out of this Agreement shall only be brought, tried and resolved in the applicable federal or provincial courts having jurisdiction in the Province of Ontario. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, PROVINCIAL AND FEDERAL, HAVING JURISDICTION IN THE PROVINCE OF ONTARIO.

Any amendment and/or waiver with respect to this Agreement, must be agreed to in writing to have any effect.

**The Schedules attached hereto form part of this Agreement,**

Schedule "A" Project Scope of Work

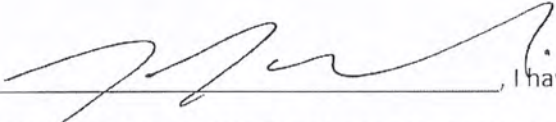
Schedule "B" Standard Specifications (by specific Trade)

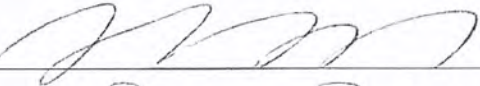
Schedule "C" Construction Drawings and Site Plan

Schedule "D" Trade Quotation, WSIB Clearance Certificate and Liability Insurance

Schedule "E" Site Rules and Regulations

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have each executed this Agreement as of the Effective Date.

Per  \_\_\_\_\_, I have the authority to bind the Corporation  
FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION, the Company

Per  \_\_\_\_\_, I have the authority to bind the Corporation  
Dungan Drywall \_\_\_\_\_, the Contractor

Per  \_\_\_\_\_, the Witness



## Schedule A

### Project Scope of Work

#### Project Description:

The School House located at 85 Sydenham Wells Road in Barrie Ontario is a 376 bedroom purpose built Student Residence stacked townhouse complex catering to the upper market student clientele. Each of the 94 units will have 4 furnished bedrooms each having their own private ensuite bathrooms and all interior finishes will be higher end.

#### Start / Completion Dates:

- Start Date: subject to Building Permit availability and Building Department Inspections, June 15<sup>th</sup>, ~~2015~~ 2018
- Completion Date: August 15<sup>th</sup>, ~~2015~~ 2018

#### Payment Terms:

- All Payments will be on a Net 30 day basis
- Invoices, including all Progress Invoices must be submitted, by the 15<sup>th</sup> of the month, for payment the following month by the 15<sup>th</sup>
- Pursuant to the terms of the Project Financing, all payments on this Project are subject to the statutory 10% construction lien holdback

**Schedule B**  
**Specifications**

Please attach Specifications for the job here



**Schedule C**  
**Construction Drawings and Site Plan**

Please attach Construction Drawings and Site Plan drawings here

## **Schedule D**

### **Trade Quotation, WSIB Clearance Certificate and Liability Insurance**

Please attach Trade Quotation, WSIB Clearance Certificate and Liability Insurance here



**Schedule E**  
**Site Rules and Regulations**

**SITE RULES AND REGULATIONS**

1. Jordan Zukowski, President of Fernwood Developments (Ontario) Corporation, will act as the Site Supervisor. Jordan Zukowski – 519-362-0543 or [jordan.zukowski@gmail.com](mailto:jordan.zukowski@gmail.com)
2. Directions to the nearest Hospital and all Permit and Municipal Documents pertaining to this project are available at the site office, located on site at 85 Sydenham Wells Road in Barrie, Ont
3. All trades and suppliers are required to have authorization to be on site by Fernwood Developments (Ontario) Corporation.
4. All trades and suppliers are required to provide WSIB Clearance Certificates, to the site office and must be available at all times.
5. All trades and suppliers are required to follow all general safety rules set out by WSIB
6. All Trades and Suppliers must be familiar with and abide by the Occupational Health and Safety Act, , including wearing Hard Hats and Safety Boots at all times, and be properly tied off and secured with a safety harness when working on roofs,
7. All trades and suppliers are required to provide their own tools and material to complete the services required. Fernwood Developments (Ontario) Corporation will not be responsible for any tools or materials left on site by the contractor.
8. All trades and suppliers are required to keep a clean and safe work environment. All garbage and/or debris is to be cleaned and disposed of properly at the end of each working day.
9. All garbage and/or debris shall be relocated to \_\_\_\_\_ and be disposed of by \_\_\_\_\_

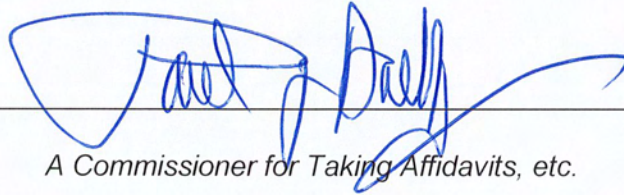
Contractors Signature \_\_\_\_\_

## Barrie School House Project All Transactions for Duncan Drywall

All Transactions					
Type	Num	Date	Debit	Credit	Balance
Bill	2387	04/21/2016		40,680.00	40,680.00
Bill	2409	04/21/2016		40,680.00	81,360.00
Bill	2410	05/12/2016		92,038.50	173,398.50
Bill	2411	05/12/2016		50,341.50	223,740.00
Bill Pmt -Cheque	1289	05/18/2016	-40,680.00		183,060.00
Bill	2434	06/14/2016		8,475.00	191,535.00
Bill Pmt -Cheque	1303	06/27/2016	-164,754.00		26,781.00
Bill	2435 - From AR	07/01/2016		11,526.00	38,307.00
Bill	2444	07/14/2016		77,405.00	115,712.00
Bill	2443	07/14/2016		27,685.00	143,397.00
Bill	2466	08/15/2016		9,040.00	152,437.00
Bill	2468	08/15/2016		19,210.00	171,647.00
Bill	2467	08/15/2016		9,040.00	180,687.00
Bill	2469	08/15/2016		10,678.50	191,365.50
Bill	2470	08/15/2016		17,571.50	208,937.00
Bill Pmt -Cheque	1384	08/29/2016	-77,405.00		131,532.00
Cheque	1414	10/04/2016	-10,000.00		121,532.00
Bill	2522	11/03/2016		5,435.30	126,967.30
Cheque	MZ CHQ	12/14/2016	-25,000.00		101,967.30
Cheque	MZ Chq	01/17/2017	-20,000.00		81,967.30
Cheque	2277	02/24/2017	-68,000.00		13,967.30
Bill	2435 add	04/01/2017		13,899.00	27,866.30
Bill	2436	04/01/2017		5,085.00	32,951.30
Bill	2628	04/25/2017		28,250.00	61,201.30
Cheque	2323	05/11/2017	-13,967.30		47,234.00
Bill	2659	05/23/2017		84,750.00	131,984.00
Cheque	2331	05/29/2017	-25,425.00		106,559.00
Bill	2681	06/22/2017		79,100.00	185,659.00
Bill Pmt -Cheque	2357	07/06/2017	-71,190.00		114,469.00
Bill	2709	07/14/2017		67,800.00	182,269.00
Bill	2708	07/14/2017		37,855.00	220,124.00
Bill Pmt -Cheque	2386	08/04/2017	-171,364.50		48,759.50
Cheque	2412	08/14/2017	-22,340.50		26,419.00
Bill	2729	08/17/2017		106,220.00	132,639.00
Bill	2743	09/20/2017		45,200.00	177,839.00
Bill Pmt -Cheque	2424	09/29/2017	-95,598.00		82,241.00
Bill	2758	10/19/2017		29,380.00	111,621.00
Bill Pmt -Cheque	2482	01/31/2018	-82,241.00		29,380.00
Bill Pmt -Cheque	2570	05/11/2018	-29,380.00		0.00
<b>Total</b>			<b>917,345.30</b>	<b>917,345.30</b>	



This is **Exhibit "B"** referred to in the Affidavit of **Robert Duncan** sworn before me this 5th day of May, 2021.



A handwritten signature in blue ink, appearing to read "Paul J. Daily", is written over a horizontal line. The signature is stylized and cursive.

*A Commissioner for Taking Affidavits, etc.*



Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE

Electronically issued : 11-Feb-2020  
Délivré par voie électronique : 11-Feb-2020  
Kitchener

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Plaintiff

and

MARSHALLZEHR GROUP INC.

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.



TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of 85 Frederick Street  
court office: Kitchener, Ontario  
N2H 0A7

TO: MARSHALLZEHR GROUP INC.  
465 Phillip Street, Suite 206  
Waterloo, Ontario  
N2L 6C7

## CLAIM

1. The Plaintiff claims:
  - (a) damages in the amount of \$15,000,000;
  - (b) return of the sum of \$2,986,637 paid as lenders' fees, commitment fees, and amendment fees for the loans committed to by the Defendant;
  - (c) an accounting relating to the financing provided or to be provided by the Defendant, including all fees, bonuses and charges relating to same;
  - (d) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (f) the costs of this action on a substantial indemnity basis, plus all applicable taxes; and,
  - (g) such further and other relief as to this Honourable Court may seem just.

## Background

2. The Plaintiff, Fernwood Developments (Ontario) Corporation ("**Fernwood**"), is a corporation incorporated pursuant to the laws of Ontario and carries on business as a builder and developer.



3. The Defendant, MarshallZehr Group Inc. (“**MZ Group**”), is a corporation incorporated pursuant to the laws of Ontario. It carries on business as a lender, mortgage broker and mortgage administrator. It provides syndicated construction and development financing to land developers throughout Ontario and elsewhere.

4. Fernwood acquired lands in the City of Barrie (85 Sydenham Wells, Barrie) to be developed as a 94-unit stacked townhouse phased condominium development known as Georgian Meadows (School House) (the “**Project**”). It was contemplated that the condominium units would be acquired by investors who would in turn rent those units to students attending Georgian College in Barrie.

5. The Project was to be constructed in three phases. Phase I was to consist of two, two-storey blocks of 16 units each. Phase II was to consist of two, two-storey blocks of 14 and 16 units. Phase III was to consist of two, two-storey blocks of 16 units each.

6. The cost consultant for the Project was Glynn Group Incorporated.

### **The MZ Group Financing**

7. MZ Group agreed to provide financing for Phase I of the Project in the principal amount of \$13,750,000 pursuant to a Commitment Letter dated December 5, 2013 (“**First Commitment**”). The loan was secured by a first mortgage on the Project.

8. Construction of Phase I was delayed for approximately 12 months because of unexpected building permit issues with the City of Barrie. As result of the delays, the First Commitment was amended on March 17, 2014, July 18, 2016, and August 23, 2016.

9. MZ Group issued a further Commitment Letter dated September 20, 2016 (the “**Second Commitment**”, and together with the First Commitment, the “**Commitments**”), pursuant to which it agreed to lend Fernwood \$15,450,000 to refinance the existing MZ Group loan made pursuant to the First Commitment and to provide funds to complete the Project.

10. The Second Commitment was amended by letters dated May 17, 2017, April 17, 2018, and September 5, 2018. Pursuant to the Second Commitment, as amended, the principal amount to be loaned to Fernwood was \$19,950,000. The loan matured on September 1, 2019.

11. With respect to the Commitments, Fernwood paid to MZ Group a total sum of approximately \$2,986,637 in what MZ Group characterized as fees, charges and bonuses.

12. On the loan funds advanced to Fernwood, MZ Group charged interest rates ranging from 9.5% per annum to 14% per annum. The effective rate of interest taking into account the various additional fees, charges and bonuses taken by MZ Group was approximately 33% per annum.

### **MZ Group Security**

13. Pursuant to the terms of the Second Commitment, MZ Group received security (collectively, the “**MZ Group Security**”) that included the following:

- (a) a first mortgage on the Project;
- (b) a General Assignment of Leases and Rents;



- (c) a General Security Agreement; and
- (d) the personal Guarantees of Rudi Zukowski and Jordan Zukowski.

14. It was an express or implied term of the Commitments, the MZ Group Security, and all amendments thereto that the parties owed each other a duty of good faith and fair dealing, that MZ Group would act in good faith in respect of the acceleration and enforcement of the MZ Group Security, and that MZ Group would advance funds pursuant to the Commitments in a timely fashion.

### **The Construction Process**

15. The buildings included in Phase I of the Project are all completed and 24 of the 32 units in that Phase have been sold. The remaining 8 units are owned by Fernwood.

16. The buildings in Phase II of the Project have all been completed and 12 of the 30 units have been sold. The remaining 18 units are owned by Fernwood.

17. The buildings in Phase III of the Project are partially completed. One building is 95% complete to occupancy (and has been since August 2018) and the other is approximately 50% complete. None of those units have been sold.

18. Fernwood is a registered home builder with Tarion New Home Warranty Program, has registered all units in the Project under the Program, and has paid all required security deposits.

19. During the course of construction, MZ Group failed or refused to advance funds to Fernwood as agreed under the terms of its Commitments and in accordance with certificates

issued by the Project cost consultant. In some cases, approved draws were inexplicably delayed for weeks and even months, thereby putting Fernwood in default of its obligations to trades and suppliers and stalling completion of the Project.

20. Fernwood pleads, and the fact is, that MZ Group did not have funds to advance to Fernwood because of financial difficulties it was having with other projects it had committed to financing and with respect to repayment obligations to its investors.

### **The Marketing Process**

21. In late 2016, Fernwood entered into a listing agreement with 2150659 Ontario Inc. c.o.b. Keller Williams Advantage (“**Keller Williams**”), a real estate broker, to sell units in the Project (the “**Listing Agreement**”). As part of the Listing Agreement with Keller Williams, it was agreed that rental income insurance would be provided to unit purchasers in order to facilitate unit sales to investors who may be unable to obtain conventional mortgage financing otherwise. In the first instance, this was to be arranged by Ai Guarantee Inc. (“**Ai**”) via RentSure Membership (Canada) Corporation (“**Rentsure**”), and subsequently came to be provided, directly or indirectly, by Nationwide Rentsure Canada Corporation (“**Nationwide**”).

22. In the fall of 2017, MZ Group demanded that Fernwood terminate its relationship with Keller Williams and retain Pensio Real Estate Group Inc. (“**Pensio Real Estate**”) as both listing agent and property manager for the Project.



23. Ai, Nationwide and Rentsure are related companies, and after some or all of Ai, Nationwide and Rentsure encountered financial difficulties, they were succeeded by related companies, ultimately Pensio Property Management Group Inc. (Nationwide, Ai, Rentsure, Pensio Real Estate, Pensio Property Management Group Inc., and their related companies are referred to herein collectively as the “**Pensio Group**”).

24. Upon the termination of Keller Williams as listing agent, it made a claim against Fernwood for damages for breach of contract. The matter was litigated pursuant to the arbitration provisions of the Listing Agreement. Although Fernwood defended the damages claim, MZ Group and Pensio Group demanded that Fernwood consent to a settlement that required payment to Keller Williams of the sum of \$991,240.18, inclusive of HST. Keller Williams subsequently obtained Judgment against Fernwood for the outstanding portion of that amount, plus additional costs as fixed by the Court.

#### **Transfer of Control to Pensio Group**

25. In late 2017 MZ Group also directed Fernwood to transfer control of the Project and of Fernwood’s operations to the Pensio Group (specifically, Nationwide). MZ Group stated that if Fernwood did not transfer control as directed, it would appoint a receiver for the Project. Fernwood’s guarantors were also threatened with claims on their guarantees and registration of Certificates of Pending Litigation against their properties.

26. MZ Group also represented to Fernwood that Pensio Group had arranged for a bulk sale of the remaining units in the Project (both those that had been constructed and those still to be constructed, totalling 58 units), and that it could conclude this sale in short order (the

“**Bulk Sale**”). Fernwood relied on this representation (the “**Bulk Sale Representation**”) in terminating the Listing Agreement with Keller Williams and in transferring control to Pensio Group.

27. Fernwood thereafter complied with MZ Group’s demands and threats, and executed documentation presented by Pensio Group, whereby control of the Project and Fernwood’s operations, including all banking and the collection of rents, was transferred to Pensio Group (specifically, Nationwide).

28. With the knowledge, and at the direction, of MZ Group, Pensio Group thereafter took control of all rental income from the Project notwithstanding that MZ Group held a General Assignment of Leases and Rents. Pensio has received all of the rental income from the Project from January 1, 2018, to the present, despite the fact that the rental insurance premiums on unsold units were paid in full in advance out of funds that should have otherwise been advanced by MZ Group for construction purposes. No certificate or policy of insurance has ever been produced to Fernwood by Pensio Group or MZ Group, and no payments have been made under such policies to Fernwood.

29. None of the rental income received by Pensio Group has been applied to payments owing by Fernwood to MZ Group pursuant to the Commitments, nor has Fernwood been provided with funds to pay operating expenses related to the Project such as utilities, internet, maintenance, and condominium fees (aside from two discrete occasions where Pensio Group paid the monthly internet and utility expenses).



30. In order to pay the expenses referred to in paragraph 29 hereof, the principal of Fernwood advanced approximately \$200,000 in personal funds to Fernwood.

31. After the transfer of control to Pensio Group, extensive discussions took place between MZ Group, Pensio Group and the principals of Fernwood with a view to concluding the Bulk Sale that MZ Group represented Pensio Group was in a position to conclude. The principals of Fernwood have co-operated in discussions regarding a variety of structures for such a transaction, but Pensio Group and MZ Group have failed to complete the Bulk Sale.

32. While Pensio Group has failed to deliver the Bulk Sale, MZ Group has otherwise resisted and thwarted efforts by the principals of Fernwood to complete the Project and sell the remaining completed units. MZ Group has refused to permit the sale or re-financing of individual units in order to generate cash flow to pay trades and aid in the completion of the Project, and it has refused to permit the reconfiguration of the units in Phases II and III to make them marketable to the public at large, rather than just investors seeking to rent to students.

33. The Bulk Sale Representation constitutes a fraudulent and negligent misrepresentation for which MZ Group is liable to Fernwood. The Bulk Sale Representation was false. Given the inherent duties of good faith and fair dealing that MZ Group and Fernwood owed each other, there was a relationship between MZ Group and Fernwood that gave rise to a duty of care in the making of the Bulk Sale Representation. MZ Group knew the Bulk Sale Representation to be false, or was negligent or reckless as to its truth. Fernwood acted reasonably in relying on the Bulk Sale Representation by terminating Keller Williams and

transferring control of the Project to Pensio Group, and Fernwood has suffered significant losses as a result.

### **Conflict of Interest**

34. Fernwood pleads, and the fact is, that MZ Group had and continues to have other business dealings and relationships with Pensio Group with respect to other land development projects in Ontario for which MZ Group provides project financing.

35. In particular, Pensio Group provides rental guarantee insurance for other projects being financed by MZ Group in order to facilitate the sale of units in those projects.

36. MZ Group has preferred its interests in its relationship with Pensio Group to its obligations to Fernwood.

37. Fernwood pleads that investors who were interested in purchasing units in the Project were directed by Pensio Group to purchase units in a project in Woodstock, Ontario, that was financed by MZ Group. In total, 26 investors were directed from the Project to MZ Group's Woodstock project. As a result, all of the units in the Woodstock project were sold in early 2018, while units in the Fernwood Project remained unsold.

38. Fernwood alleges that MZ Group interfered in the completion of the Project in that it refused to advance funds to complete construction notwithstanding that such funds were certified for payment by the Project cost consultant, contrary to the terms of the Commitments.



39. Fernwood also alleges that MZ Group interfered in the marketing of the Project units by requiring it to transfer control of the Project and Fernwood's operations to Pensio Group, and with Pensio Group's complicity, directed investors who were prepared to purchase units in the Project to other projects in which MZ Group and Pensio Group had financial interests.

40. MZ Group permitted Pensio Group to collect all rental income from the Project (notwithstanding that it had a General Assignment of Leases and Rents) so that Fernwood could not use the funds to pay construction trades, Project operating costs, and loan payments to MZ Group.

41. MZ Group required Fernwood and its principal to enter into negotiations and several proposed transactions to transfer the Project to Pensio Group when it knew, or should have known, that such transactions would not be completed.

42. The discussions with Pensio Group culminated with a proposal in the summer of 2019 by MZ Group that the shares of Fernwood be sold to Pensio Group. The solicitors for MZ Group prepared a Share Purchase Agreement and an Inter-Creditor Agreement that provided for the sale of the shares of Fernwood to Pensio Group for the sum of \$23,142,000. Notwithstanding that the principal of Fernwood agreed to such sale, the transaction was not completed because Pensio Group refused to close and wrongfully alleged that Fernwood failed to provide appropriate financial information.

43. From approximately March 2018 to date, MZ Group refused or otherwise neglected to advance funds to Fernwood under the Second Commitment and also refused to permit

financing arranged by Fernwood to permit completion of Phase III of the Project and finishing work such as landscaping for the other Phases of the Project.

44. Since the transfer of control to Pensio Group, MZ Group has also refused to permit new sales of any of the completed units in Phases I or II still owned by Fernwood, continued to accrue interest on the outstanding amounts of the loans and permitted Pensio Group to collect all of the rental income from the Project for more than two years.

45. Fernwood was thereafter obliged to pay for Project expenses such as water, electricity, internet, and condominium fees, and legal fees relating to the registration of the Project condominium documents, without receiving funds from MZ Group, as committed by it, and without receiving any rental income.

46. In 2018, the initial phase of the condominium plan for the Project was registered and sales of units that were agreed to prior to Pensio Group taking control and which were in interim occupancy closed. MZ Group required that the proceeds of these sales be directed to its lawyer, who then held \$525,441.94 from the proceeds of unit sales for payment of HST for those unit sales. Inexplicably, those funds were improperly held by that law firm for approximately four months before they were finally remitted to Canada Revenue Agency. During that time, interest and penalties accrued on the amount of HST that was to be remitted and a lien was registered by Canada Revenue Agency against the Project lands. After those funds were finally remitted, there was an overpayment of Fernwood's HST liability.

47. MZ Group's actions constitute a breach of the duty of good faith and fair dealing that it owed to Fernwood under the terms of Commitments and the MZ Group Security.



48. MZ Group is liable to Fernwood for unlawful act civil conspiracy. MZ Group acted in concert and with a common design with Pensio Group and others in a manner that was contrary to the terms of Commitments and the MZ Group Security. MZ Group's actions were directed at Fernwood, and MZ Group knew or ought to have known that damage to Fernwood would result.

49. Fernwood's damages as a result of MZ Group's actions continue to accrue and to be calculated. Fernwood undertakes to provide full particulars of its damages prior to the trial of this action.

50. Notwithstanding MZ Group's numerous breaches of its obligations under the Commitments, and its refusal to permit sales of units in the Project, on January 21, 2020, MZ Group demanded payment of the sum of \$24,051,019.23 from Fernwood and on February 3, 2020, brought an Application for the appointment of a receiver for Fernwood and the Project.

51. Fernwood pleads and relies on the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16 and the *Personal Property Security Act*, R.S.O. 1990, c. P.10.

- 15 -

**DUNCAN, LINTON LLP**

Barristers & Solicitors  
45 Erb Street East  
Waterloo, Ontario  
N2J 1L7

Irwin A. Duncan (LSO #12857G)

e: [iad@kwlaw.net](mailto:iad@kwlaw.net)

Peter A. Hertz (LSO #56391N)

e: [phertz@kwlaw.net](mailto:phertz@kwlaw.net)

t: (519) 886-3340

f: (519) 886-8651

Lawyers for the Plaintiff



FERNWOOD DEVELOPMENTS (ONTARIO)  
CORPORATION  
Plaintiff

-and- MARSHALLZEHR GROUP INC.  
Defendant

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
WATERLOO REGION

**STATEMENT OF CLAIM**

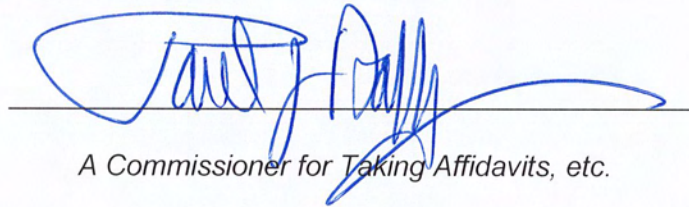
**DUNCAN, LINTON LLP**  
Barristers & Solicitors  
45 Erb Street East  
Waterloo, Ontario  
N2J 1L7

Irwin A. Duncan (I.S.O #12857G)  
e: iad@kwlaw.net  
Peter A. Hertz (I.S.O #56391N)  
e: phertz@kwlaw.net

t: (519) 886-3340  
f: (519) 886-8651

Lawyers for the Plaintiff

This is **Exhibit "C"** referred to in the Affidavit of **Robert Duncan** sworn before me this 5th day of May, 2021.



*A Commissioner for Taking Affidavits, etc.*



## Jane Barager

---

**From:** Paul Daffern  
**Sent:** Tuesday, January 26, 2021 3:25 PM  
**To:** 'Jeff.Larry@paliareroland.com'  
**Cc:** Jane Barager; Dawn Viveiros  
**Subject:** RE: Fernwood Developments (Ontario ) Corporation

Jeff

Today is the first time I have seen your email dated December 15, 2020.

It appears that you are suggesting that my client Duncan Drywall is entitled to priority to a maximum of \$24,000.00 but that RSM is not prepared to admit that the priority is that amount yet.

It also appears that you are claiming that Jeff McKeever is entitled to a maximum priority of \$21,198.96 but again RSM is not prepared to admit that this is the amount of priority Mr. McKeever is entitled to.

I disagree with your conclusions and its my opinion that my clients are entitled to priority for the full amounts of their claims for lien including their legal costs.

I am interested in how you calculated the amount of the Priority Claims of my clients.

Please provide a detailed written explanation for your calculations.

Please also explain why the Receiver is not prepared to admit that any amount of my client's claims have priority.

Please also be advised That I concerned about why it has taken the Receiver so long to get to the point where you are suggesting that the lien claimants are entitled to a small percentage of the total amount of their Construction Liens.

Please specifically provide the details of every mortgage advance made by the mortgagee together with back up documentation to prove the dates of the advances.

Please also provide me with the details of the Construction Lien Trust Funds that the Mortgagee maintained out of the mortgage advances.

Time is of the essence to my clients.

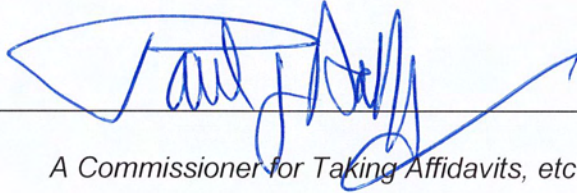
Please advise me when I may expect to receive the requested information.

Yours very truly,

*Paul J. Daffern*

Paul J. Daffern Law Firm  
48 High Street  
Barrie, Ontario L4N 1W4  
Tel: 705-725-9670 ext. 26  
Fax: 705-725-8764  
[www.daffernlaw.com](http://www.daffernlaw.com)

This is **Exhibit "D"** referred to in the Affidavit of **Robert Duncan** sworn before me this 5th day of May, 2021.



A handwritten signature in blue ink, appearing to read "Paul J. Kelly", is written over a horizontal line. The signature is stylized and cursive.

*A Commissioner for Taking Affidavits, etc.*



## Jane Barager

---

**From:** Jeff.Larry@paliareroland.com  
**Sent:** Thursday, February 04, 2021 11:45 AM  
**To:** Paul Daffern  
**Cc:** Jane Barager; Dawn Viveiros  
**Subject:** RE: Fernwood Developments (Ontario ) Corporation  
**Attachments:** Jeff McKeever Plumbing.pdf; Doc2.docx; 2016-12-15 Georgian Meadows MZGI 72 Trust Advance Statement.pdf; 2017-05-24 Advance Statement Excel.pdf; 2017-07-11 Final Advance Statement.pdf; 2017-08-10 Final Advance Statement.pdf; 2017-12-20 Final Advance Statement .xls.pdf; 2018-02-16 Final Advance Statement Excel.pdf; 2018-08-31 GMSH Final Advance Statement (signed).pdf

Paul,

Thank you for your email.

My December 15, 2020 was circulated to counsel for the lien claimants including yourself, below. I am not sure why it did not come to your attention.

In any case, and to be clear, the Receiver has not yet determined the validity, quantum or priority of any of the liens claims. Rather, the Receiver has only attempted to determine the maximum amount of each lien claimant's possible priority claim so that the lien claimant will be properly protected for any priority dispute that may result in future. Ultimately, however, if there is a dispute about the priority, that will have to be addressed by the court.

As you know, MarshallZehr Group Inc.'s mortgage was granted in 2013. Attached are trust advance statements for the mortgage, as well as a summary of the advances. You will note that the statements show no advances were made on the mortgage following the registration of either of your client's liens.

Under Section 78 (without acknowledging or determining priorities in this case), a lien can have priority over a mortgage or building mortgage to the extent of any holdbacks required to be retained by the owner under Part IV of the Construction Act. The Owner's holdback obligations under Part IV of the Construction Act are limited to 10% of the price of the services or materials supplied under the applicable contract. A lien can also have priority over advances made under a mortgage following registration of a lien, however, the records provided to the Receiver shows this did not occur.

To the extent your client is suggesting that it is entitled to participate in the holdback on other contracts, we are not aware of such authority. If you have any authority to the contrary or a basis as to why your client's priority claim would exceed the holdback obligations in these circumstances, we would be pleased to consider it.

As requested, the Receiver's calculation of the maximum potential priority amount for each of your clients is as follows:

### Duncan Drywall

We understand from your client's claim for lien and information supplied by your client that:

1. Duncan Drywall entered into a direct contract with the Owner, Fernwood Developments (Ontario) Corporation for the supply of drywall and related work (the "Contract") for the project known as the "School House Barrie"
2. The contract was for a price of \$240,000 plus HST
3. Duncan Drywall's claim for lien is the amount of \$178,195 plus HST (which does not include a claim for demobilization costs) and was registered on March 5, 2020



4. Duncan Drywall asserts that its services under its lien were undertaken between April 17, 2017 and January 30, 2020
5. Paragraph 13 of Duncan Drywall's statement of claim states that "The Plaintiff therefore claims priority pursuant to the Construction Lien Act over MarshallZehr Group Inc.'s mortgage ..."

In this case, given that your client's contract price is \$240,000 plus HST, the Owner's holdback obligations would be no more than \$24,000 plus HST.

Finally, as you also know, before a lien claimant can make a claim for priority, it must first establish the validity of the lien itself. The Receiver's records show that Duncan Drywall's invoices were 90 days outstanding as of October 31, 2019 in the amount of \$178,195 (its lien amount). In other words, it appears from the Receiver's records that Duncan Drywall's services under the lien were supplied prior to October 31, 2019. If that is correct, the lien may not have been registered within the deadlines required under the Construction Act.

Jeff McKeever Plumbing (JMP)

We understand from your client's claim for lien and information supplied by your client that:

1. JMP entered into a direct contract with the Owner, Fernwood Developments (Ontario) Corporation (the "Contract") for the Project
2. The Contract was for a price of \$211,989.63 plus HST. JMP asserts it completed the Contract
3. JMP's claim for lien is the amount of \$173,489.63 plus HST and was registered on Feb 13, 2020
4. JMP asserts that its services under its lien were undertaken between June 23, 2017 and Feb 13, 2020
5. JMP's statement of claim does not include a priority claim over the mortgage

In this case, given that your client's contract price is \$211,989.63 plus HST, the Owner's holdback obligations would be no more than \$21,198.96 plus HST. We note that the letter from JMP's previous counsel dated July 24, 2020 expressly confirmed that JMP's priority claim over the mortgage was in the amount of \$21,198.96.

Finally, we point out that the validity of JMP's lien itself appears to be in question. JMP's original Statutory Declaration (attached) was dated on December 9, 2019 and showed the entire amount of the lien (\$172,450) owing on that date. The date of the Statutory Declaration was then struck out and changed to Jan 9, 2020. The lien was registered Feb 13, 2020. Our information is that, in fact, JMP's work was indeed completed well before December 2019 such that its lien may well be out of time.

**From:** Paul Daffern <paul.daffern@daffernlaw.com>

**Sent:** January 26, 2021 3:25 PM

**To:** Jeff Larry <Jeff.Larry@paliareroland.com>

**Cc:** Jane Barager <jane.barager@daffernlaw.com>; Dawn Viveiros <dawn.viveiros@daffernlaw.com>

**Subject:** RE: Fernwood Developments (Ontario ) Corporation

Jeff

Today is the first time I have seen your email dated December 15, 2020.

It appears that you are suggesting that my client Duncan Drywall is entitled to priority to a maximum of \$24,000.00 but that RSM is not prepared to admit that the priority is that amount yet.



It also appears that you are claiming that Jeff McKeever is entitled to a maximum priority of \$21,198.96 but again RSM is not prepared to admit that this is the amount of priority Mr. McKeever is entitled to.

I disagree with your conclusions and its my opinion that my clients are entitled to priority for the full amounts of their claims for lien including their legal costs.

I am interested in how you calculated the amount of the Priority Claims of my clients.

Please provide a detailed written explanation for your calculations.

Please also explain why the Receiver is not prepared to admit that any amount of my client's claims have priority.

Please also be advised That I concerned about why it has taken the Receiver so long to get to the point where you are suggesting that the lien claimants are entitled to a small percentage of the total amount of their Construction Liens.

Please specifically provide the details of every mortgage advance made by the mortgagee together with back up documentation to prove the dates of the advances.

Please also provide me with the details of the Construction Lien Trust Funds that the Mortgagee maintained out of the mortgage advances.

Time is of the essence to my clients.

Please advise me when I may expect to receive the requested information.

Yours very truly,

*Paul J. Daffern*

Paul J. Daffern Law Firm

48 High Street

Barrie, Ontario L4N 1W4

Tel: 705-725-9670 ext. 26

Fax: 705-725-8764

[www.daffernlaw.com](http://www.daffernlaw.com)

Confidentiality Note: the information in this message is protected by solicitor/client and/or solicitor/work product privilege. It is intended for the use of the individual to whom it is addressed and the privileges are not waived by virtue of having this message sent by e-mail. If the person actually receiving this message is not the person to whom it is addressed or the employee or agent responsible to deliver it to the named recipient, the use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this e-mail in error, please immediately delete it and notify us by telephone at 705-725-9670.

**From:** [Jeff.Larry@paliareroland.com](mailto:Jeff.Larry@paliareroland.com) <[Jeff.Larry@paliareroland.com](mailto:Jeff.Larry@paliareroland.com)>

**Sent:** January 26, 2021 12:24 PM

**To:** Paul Daffern <[paul.daffern@daffernlaw.com](mailto:paul.daffern@daffernlaw.com)>

**Subject:** FW: Fernwood Developments (Ontario ) Corporation

Paul

May I please hear from you. I have heard from all other counsel and the Receiver intends to go to court shortly and wants confirmation on these numbers

**From:** Jeff Larry

**Sent:** December 15, 2020 9:12 AM

**To:** paul.daffern@daffernlaw.com; mmccluskey@millerthomson.com; 'kdoggett@millerthomson.com'

<kdoggett@millerthomson.com>; jsmith@rzcldlaw.com

**Subject:** Fernwood Developments (Ontario ) Corporation

Counsel:

As I believe you know, I am independent counsel to RSM Canada Limited, the receiver of Fernwood Developments (Ontario) Corporation.

We have conducted a review each of the lien claims for purposes of determining the potential priority claim of each of the lien claimants. These potential priority amounts are set out in the chart below. **I ask that you please confirm the amount of the potential priority claim on behalf of your respective client.**

To be clear, the Receiver has not made any final determination about the validity or quantum of the liens, nor any priority amount. Rather, at this stage, the Receiver is only trying to determine the aggregate amount of the potential priority claim so that those can funds can be held in connection with any sale of the property.

I look forward to hearing from you and if you have any questions, do not hesitate to contact me.

	<u>Lien Claimant</u>	<u>Quantum of Lien Claims</u>	<u>Potential Priority Claim (10% of value of services provided for each steam. Amount based on total contract value as stated in liens)</u>	<u>Counsel</u>
1.	Duncan Drywall	\$178,195 plus HST	\$24,000	Paul Daffern
2.	Ground Electrical Services	\$106,939.80	\$10,693.98	Michael McCluskey
3.	Jeff McKeever Plumbing	\$211,989.63	\$21,198.96	Paul Daffern
4.	Priority Mechanical Services Ltd.	\$231,154.55	\$107,098.77	Keith Doggett
5.	Nezz Electric	\$122,285.30	\$17,924.74	Michael McCluskey
6.	Mack Construction	\$28,740	\$2,874	James Smith



	<b>Total</b>	<b>\$879,304</b>	<b>\$183,790.45</b>	
--	--------------	------------------	---------------------	--

**Jeffrey Larry, LL.B, MBA**

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301

c: 416.553.2789

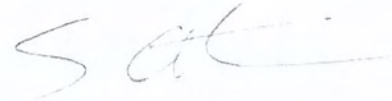
e: [jeff.larry@paliareroland.com](mailto:jeff.larry@paliareroland.com)

FILE # 68575

**PRELIMINARY TRUST ADVANCE STATEMENT - Anticipated Closing Date: December 15, 2016**  
**MarshallZehr Group Inc. corporate financing with Fernwood Developments (Ontario) Corporation**

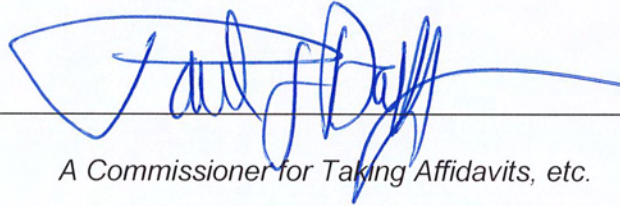
Received from MarshallZehr Group Inc. Tranche A - \$10,230,000 Tranche B - \$4,950,000 (less \$1,500,000 relent into Tranche A; \$985,000 relent into Tranche B)		\$ 12,695,000.00
Paid to MarshallZehr Group Inc. In Trust - payout of existing mortgage less funds being relent \$2,485,000 Per Diem \$4,838.71	\$ 11,917,503.09	
Paid to First Canadian Title - title insurance	\$ 7,209.00	
Paid to Insurance Reviewer - Robert Harder Consulting Inc.	\$ 2,994.50	
Paid to MarshallZehr Group Inc., in trust:		
Lender Fee	\$ 150,000.00	
Admin Fee	\$ 5,000.00	
Interest Adjustment to IAD - Jan. 1 (Dec. 12 to Dec. 31)	\$ 74,594.52	
Interest Adjustment to IAD - Jan. 1 (Dec. 15 to Dec. 31)	\$ 14,135.62	
Held by Sorbara, Schumacher, McCann LLP Estimated Legal Fees + disbursements plus HST	\$ 10,500.00	
Balance Held in Trust with MarshallZehr Group Inc.	\$ 513,063.27	
<b>TOTAL</b>	<b>\$ 12,695,000.00</b>	<b>\$ 12,695,000.00</b>

This is a preliminary advance statement.  
Final advance statement comes directly from our accounting department.





This is **Exhibit "E"** referred to in the Affidavit of **Robert Duncan** sworn before me this 5th day of May, 2021.



A handwritten signature in blue ink, appearing to read "Paul H. [unclear]", is written over a horizontal line.

*A Commissioner for Taking Affidavits, etc.*

Sum of Transaction Amount		Transaction Type	
Date	Funding Number	Borrower Advance	Borrower Discharge Principal Pd
Dec 12, 2016	A - 1	\$ 8,730,000.00	
	B - 1	\$ 3,800,000.00	
Dec 15, 2016	A - 2	\$ 1,500,000.00	
	B - 2	\$ 1,150,000.00	
Dec 16, 2016	A - 1		\$ 247,440.51
	A - 2		\$ 42,515.55
Dec 21, 2016	A - 1		\$ 260,468.55
	A - 2		\$ 44,754.05
Jun 1, 2017	A - 3	\$ 502,691.00	
Jun 16, 2017	A - 1		\$ 433,437.88
	A - 2		\$ 74,473.86
	A - 3		\$ 26,499.99
Jul 14, 2017	A - 4	\$ 504,657.00	
Aug 10, 2017	A - 5	\$ 1,034,074.00	
Dec 20, 2017	A - 6	\$ 220,000.00	
Feb 16, 2018	A - 7	\$ 2,951,949.84	
Aug 31, 2018	A - 8	\$ 686,218.55	
<b>Grand Total</b>		<b>\$ 21,079,590.39</b>	<b>\$ 1,129,590.39</b>



MARSHALLZEHR GROUP INC.

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

APPLICANT

RESPONDENT

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT

TORONTO

**AFFIDVIT OF ROBERT DUNCAN  
SWORN MAY 5th, 2021**

**PAUL J. DAFFERN LAW FIRM**

Barristers & Solicitors

48 High Street

Barrie, Ontario L4N 1W4

**PAUL J. DAFFERN**

LSO #28383M

Tel: (705) 725-9670

Fax: (705) 725-8764

Email: [paul.daffern@daffernlaw.com](mailto:paul.daffern@daffernlaw.com)

Lawyer 1267989 ONTARIO INC. o/a Duncan Drywall



MARSHALLZEHR GROUP INC.  
APPLICANT

-and-  
FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION  
RESPONDENT

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**RESPONDING MOTION RECORD**

**PAUL J. DAFFERN LAW FIRM**  
Barristers & Solicitors  
48 High Street  
Barrie, Ontario L4N 1W4

**PAUL J. DAFFERN**  
LSO #28383M  
Tel: (705) 725-9670  
Fax: (705) 725-8764  
Email: [paul.daffern@daffernlaw.com](mailto:paul.daffern@daffernlaw.com)

Lawyer for 1267989 ONTARIO INC. o/a Duncan Drywall