

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

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**DUNSIRE (LANDSDOWN) INC.**

Respondent

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

**FRESH AS AMENDED NOTICE OF MOTION**

(re approval of sale transaction and other relief)  
(returnable May 23, 2018)

**RSM CANADA LIMITED (“RSM”)**, in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of the Respondent (the “**Property**”), will make a motion to a Judge of the Commercial List on Wednesday May 23, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

(a) an order:

- (i) approving the sale transaction (the “**Sale Transaction**”) contemplated by the asset purchase agreement between the Receiver and Aquicorp Inc., in trust (the “**Purchaser**”), dated May 1, 2018 (the “**APA**”), and vesting in the Purchaser the Respondent’s right, title and interest in and to the “**Purchased Assets**” described in the APA (the “**Purchased Assets**”) free and clear of claims and encumbrances (other than permitted encumbrances), upon the delivery of a certificate to the Purchaser by the Receiver;
  - (ii) authorizing the Receiver to terminate nine (9) existing agreements of purchase and sale entered into by the Respondent for units to be constructed in the Development (as defined below);
- (b) an order:
- (i) abridging, if necessary, the time for service of this notice of motion and the motion record so that the motion is properly returnable on May 23, 2018;
  - (ii) approving the First Report of the Receiver dated May 14, 2018 (the “**First Report**”) and the conduct and activities of the Receiver as described therein;
  - (iii) approving the fees and disbursements of the Receiver and its counsel, as set out in the First Report and the fee affidavits appended thereto (the “**Fee Affidavits**”);
  - (iv) authorizing the Receiver, following the closing of the Sale Transaction, to make distributions to the Applicant, MarshallZehrGroup Inc. (“**MZG**”), as

first mortgagee of the Real Property (as defined below), from the net sale proceeds of the Real Property, up to the maximum amount of MZG's indebtedness secured by its first mortgage without further Order of this Court, subject to the Receiver maintaining sufficient reserves with respect to any potential priority claims that may exist;

(v) sealing the Confidential Appendices to the First Report pending further Order of the Court or the closing of the Sale Transaction; and

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

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. RSM was appointed as the Receiver pursuant to the Appointment Order dated December 6, 2017 (the "**Appointment Order**").

2. The Appointment Order authorized the Receiver to, among other things, market and sell any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, with the approval of the Court.

3. The Property includes, without limitation, the real property municipally known as Landsdown Drive, Guelph, Ontario and legally described as set out in Schedule "A" of the Appointment Order (the "**Real Property**").

4. The Real Property was acquired by the Respondent to develop it as a residential enclave of 27 single-detached bungalows and bungalofts to be known as White Cedar Estates (the “**Development**”).

5. The Respondent entered into agreements of purchase and sale with individuals (the “**Unit Buyers**”) for 26 of the 27 units (the “**Units**”) to be constructed in the Development. In each agreement, the Unit Buyers agreed that their interest as purchaser under the agreement, and any and all deposits and any purchaser’s lien, was subordinated and postponed to any mortgages and charges registered against title to the Real Property.

### **Sale Transaction**

6. As detailed in the First Report, the Receiver carried on an extensive marketing of the Real Property. As a result of the process, the Receiver has entered into the APA with the Purchaser.

7. As part of the Sale Transaction, the Purchaser has agreed to assume the agreements of purchase and sale for 14 of the Units, as these Unit Buyers agreed to increase the purchase price under their respective agreements.

8. With respect to the remaining twelve (12) Units, the APA provides that the Purchaser will return the deposits to these Unit Buyers, together with a 25% bonus payment, by no later than December 31, 2018. The Purchaser has entered into mutual release and termination agreements with the Unit Buyers of three (3) of the Units. With respect to the remaining nine (9) Units, the Purchaser was unable to reach an agreement with any of the Unit Buyers for these Units, and thus requires the Receiver to obtain an order of the Court authorizing the Receiver to terminate the agreements.

9. The Receiver is of the view that the APA should be approved by the Court, as:
- (a) the Real Property has been adequately exposed to the market based on the steps taken by the Receiver;
  - (b) the APA represents the only offer received for the Real Property; and
  - (c) the APA represents the best realization for the Real Property for the Debtor's stakeholders.

**Distribution to First Mortgagee**

10. The Receiver has obtained an independent opinion that the mortgage held by MZG is valid and enforceable against the Real Property and is the registered first mortgage against the Real Property.

11. The Receiver is requesting that, following the closing of the Sale Transaction, it be authorized to make distributions to the MZG, from the net sale proceeds of the Real Property, up to the maximum amount of MZG's indebtedness secured by its first mortgage without further Order of this Court, subject to the Receiver maintaining sufficient reserves with respect to any potential priority claims that may exist

**Sealing**

12. The Receiver will be requesting that the Court grant an order sealing the Confidential Appendices to the First Report pending further order of the Court or the closing of the Sale Transaction, as the information contained in the documents is commercially sensitive and would negatively impact the Receiver's ability to re-market the Real Property in the event the Sale Transaction does not close.

**Approval of Fees and Disbursements**

13. The Receiver will also be requesting that the Court approve its fees and disbursements and that of its legal counsel, as detailed in the First Report and the Fee Affidavits.

**General**

14. The First Report and the Supplement to the First Report of the Receiver to be filed (the “**Supplementary Report**”).

15. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).

16. The *Bankruptcy and Insolvency Act* (Canada) and the *Courts of Justice Act* (Ontario).

17. The inherent and equitable jurisdiction of the Court.

18. Such other grounds as counsel may advise and this Honourable Court may permit.

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

1. The First Report and the appendices annexed thereto, including without limitation the Fee Affidavits;
2. The Supplementary Report; and
3. such further and other material as counsel may advise and this Honourable Court may permit.

May 18, 2018

**CHAITONS LLP**

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

**Harvey Chaiton** (LSO No. 21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

E-mail: harvey@chaitons.com

**Sam Rappos** (LSO No. 51399S)

Tel: (416) 218-1137

Fax: (416) 218-1837

E-mail: samr@chaitons.com

**Lawyers for RSM Canada Limited,  
Court-appointed Receiver**

**TO: THE SERVICE LIST**

Court File No. CV-17-587118-00CL

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

PROCEEDING COMMENCED AT TORONTO

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5000 Yonge Street, 10<sup>th</sup> floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO No. 21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

E-mail: harvey@chaitons.com

**Sam Rappos** (LSO No. 51399S)

Tel: (416) 218-1137

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E-mail: samr@chaitons.com

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