

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

THE HONOURABLE MR.)

FRIDAY, THE 25TH

JUSTICE HAINES)

DAY OF MAY, 2018

BETWEEN:



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**

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Dunsire (Landsdown) Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Aquicorp Inc., in trust (the "**Purchaser**") dated May 1, 2018 and appended to the First Report of the Receiver dated May 14, 2018 (the "**Report**"), and vesting in the Purchaser the Debtor's right,

title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the Supplement to the First Report dated May 22, 2018, and on hearing the submissions of counsel for the Receiver, the Purchaser, and such other counsel listed on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Antoinette DePinto sworn May 16 and 23, 2018 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the real property identified in **Schedule B** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise

(collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated December 6, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that

all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

The Debtor's registration under the Ontario New Home Warranties Plan Act is not a Purchased Asset, and such

3. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of Wellington (LRO #61) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

registrations will not be transferred to the Purchaser pursuant to this order.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "Haines", written over a horizontal line.

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

MAY 25 2018

PER / PAR:

Handwritten initials in black ink, appearing to be "ML".

Schedule A – Form of Receiver’s Certificate

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

**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
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the "**Court**") dated December 6, 2017, RSM Canada Limited was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Dunsire (Landsdown) Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated May 25, 2018, the Court approved the agreement of purchase and sale made as of May 1, 2018 (the "**Sale Agreement**") between the Receiver and Aquicorp. Inc., in trust (the "**Purchaser**") and provided for the vesting in the Purchaser of the

Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

RSM CANADA LIMITED, in its capacity as Receiver of the undertaking, property and assets of Dunsire (Landsdown) Inc., and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Real Property

PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC492853; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC498736; SUBJECT TO AN EASEMENT AS IN WC500683; CITY OF GUELPH

City of Guelph, County of Wellington

PIN 71505-0993 (LT)

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

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
WC382040	2013/08/20	TRANSFER	\$430,000	NORTON, JEAN ISABEL	DUNSIRE (LANDSDOWN) INC.
WC382442	2013/08/23	TRANSFER	\$500,000	2341540 ONTARIO LTD.	DUNSIRE (LANDSDOWN) INC.
WC394831	2014/01/17	TRANSFER	\$650,000	HENRY, JOAN ELIZABETH HENRY, WESLEY NELSON	DUNSIRE (LANDSDOWN) INC.
WC394832	2014/01/17	TRANSFER	\$600,000	GAW, DIANE GAW, TIMOTHY ALLAN	DUNSIRE (LANDSDOWN) INC.
WC394834	2014/01/17	CHARGE	\$1,731,000	DUNSIRE (LANDSDOWN) INC.	SORRENTI LAW PROFESSIONAL CORPORATION
WC394899	2014/01/20	TRANSFER OF CHARGE		SORRENTI LAW PROFESSIONAL CORPORATION	SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY
WC399284	2014/03/28	TRANSFER OF CHARGE		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
WC400369	2014/04/11	TRANSFER OF CHARGE		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY
WC472869	2016/06/27	CHARGE	\$16,000,000	DUNSIRE (LANDSDOWN) INC.	MARSHALLZEHR GROUP INC.
WC472870	2016/06/27	NO ASSGN RENT GEN		DUNSIRE (LANDSDOWN) INC.	MARSHALLZEHR GROUP INC.
WC472884	2016/06/28	POSTPONEMENT		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	MARSHALLZEHR GROUP INC.
WC492854	2017/01/12	POSTPONEMENT		MARSHALLZEHR GROUP INC.	GUELPH HYDRO ELECTRIC SYSTEMS INC.
WC492855	2017/01/12	POSTPONEMENT		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	GUELPH HYDRO ELECTRIC SYSTEMS INC.

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
WC498737	2017/03/23	POSTPONEMENT		MARSHALLZEHR GROUP INC.	UNION GAS LIMITED
WC498738	2017/03/23	POSTPONEMENT		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	UNION GAS LIMITED
WC524194	2017/11/24	TRANSFER OF CHARGE		SORRENTI LAW PROFESSIONAL CORPORATION	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
WC524597	2017/11/29	CONSTRUCTION LIEN	\$1,075,069	KIESWETTER EXCAVATING INC.	
WC525428	2017/12/05	CERTIFICATE		KIESWETTER EXCAVATING INC.	
WC525510	2017/12/06	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST	RSM CANADA LIMITED

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

(unaffected by the Vesting Order)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
MS40365	1964/07/10	BY-LAW			
MS57023	1966/07/08	BY-LAW			
MS59544	1966/10/20	BY-LAW			
61R20544	2015/02/25	PLAN REFERENCE			
WC427554	2015/02/25	APPLICATION FOR ABSOLUTE TITLE		DUNSIRE (LANDSDOWN) INC.	
WC428169	2015/03/04	APPLICATION TO CONSOLIDATE		DUNSIRE (LANDSDOWN) INC.	
WC458365	2016/01/15	NOTICE	\$2	DUNSIRE (LANDSDOWN) INC.	WELLINGTON VACANT LAND CONDOMINIUM CORPORATION NO. 169
61R20870	2016/07/14	PLAN REFERENCE			
WC481971	2016/09/20	NOTICE		THE CORPORATION OF THE CITY OF GUELPH	
WC481973	2016/09/20	NOTICE		THE CORPORATION OF THE CITY OF GUELPH	

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
WC492853	2017/01/12	TRANSFER EASEMENT	\$2	DUNSIRE (LANDSDOWN) INC.	GUELPH HYDRO ELECTRIC SYSTEMS INC.
WC498736	2017/03/23	TRANSFER EASEMENT	\$2	DUNSIRE (LANDSDOWN) INC.	UNION GAS LIMITED
WC500683	2017/04/18	TRANSFER EASEMENT	\$2	DUNSIRE (LANDSDOWN) INC.	ROGERS COMMUNICATIONS INC.

MARSHALLZEHR GROUP INC.
Applicant

-and-

DUNSIRE (LANDSDOWN) INC.
Respondent
Court File No. CV-17-587118-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Court-appointed Receiver**