

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

**BETWEEN:**

**MARSHALLZEHR GROUP INC.**

**Applicant**

**- and -**

**DUNSIRE (LANDSDOWN) INC.**

**Respondent**

**FIRST REPORT OF THE RECEIVER**

**MAY 11, 2018**

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- C. Marketing Materials
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## INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 6, 2017 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Dunsire (Landsdown) Inc. (“**Dunsire**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”).
2. 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**”). The Real Property was acquired by the Debtor to develop it as a residential enclave of 27 single-detached bungalows and bungaloffs to be known as White Cedar Estates. The circumstances leading to the appointment of the Receiver are set out in the affidavit of Murray Snedden sworn November 24, 2017 (the “**Snedden Affidavit**”) and filed in support of the receivership application. A copy of the Appointment Order is attached hereto as **Appendix “A”**. A copy of the Snedden Affidavit, without exhibits, is attached hereto as **Appendix “B”**.
3. The Appointment Order authorized the Receiver to, among other things:
  - (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) manage, operate and carry on the business of the Debtor, including the powers to enter into agreements, incur any obligations in the ordinary course of business,

cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (c) take all steps necessary to satisfy the conditions of Draft Plan of Vacant Land Condominium (23CDM-1307) for the Real Property and thereafter register the Vacant Land Condominium;
- (d) authorizing the Receiver, out of the monies in its hands, to pay all interest arrears and thereafter make all monthly interest payments as they become due and owing by the Debtor to the Applicant, or as it may direct in writing, in connection with the indebtedness owed by the Debtor under Tranche A of Facility 1 and secured by the First Mortgage (as defined below); and
- (e) to 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.

4. In addition, paragraph 22 of the Appointment Order empowered the Receiver to borrow an amount not to exceed \$2,000,000 (or such greater amount as the Court may by further Order authorize), which advance(s) will be repaid in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the First Mortgage, the Receiver's Charge (as defined in the Appointment Order), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*.

5. The Appointment Order, together with the related court documents, have been posted on the Receiver's website, which can be found at <http://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/dunsire-landsdown-inc.html>.

## **PURPOSE OF FIRST REPORT**

6. The purpose of this first report of the Receiver (the "**First Report**") is to:
- (a) provide to the Court with details of the Receiver's activities since its appointment;
  - (b) provide the Court with a summary of the Receiver's marketing process leading to the receipt of offers for the Real Property (the "**Marketing Process**");
  - (c) provide the Court with a summary of the Receiver's receipts and disbursements for the period December 6, 2017 to May 8, 2018;
  - (d) provide the Court with information in support of its request that the Court grant:
    - (i) an order authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Aquicorp Inc., in trust (the "**Purchaser**"), dated May 1, 2018 together with amendments thereto (the "**APS**"), approving the sale of the Real Property to the Purchaser pursuant to the APS, and vesting title to the Real Property in the Purchaser, or as it may further direct in writing, free and clear of all claims and encumbrances, other than permitted encumbrances, upon the closing of the purchase and sale transaction contemplated in the APS (the "**Sale Transaction**");

(ii) an order:

- (1) sealing the Confidential Appendices to the First Report pending further Order of the Court or the closing of the Sale Transaction;
- (2) approving the First Report and the conduct and activities of the Receiver as described herein;
- (3) approving the fees and disbursements of the Receiver to April 15, 2018; the Receiver's counsel, Chaitons LLP ("**Chaitons**"), to April 30, 2018; and the Receiver's independent legal counsel, Goldman, Sloan, Nash & Haber LLP ("**GSNH**") to March 31, 2018; and
- (4) 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, from the net sale proceeds of the Real Property, up to the maximum amount of MZG's indebtedness secured by the First Mortgage (as defined below) without further Order of this Court, subject to the Receiver maintaining sufficient reserves with respect to any potential priority claims that may exist.

## **TERMS OF REFERENCE**

7. In preparing this First Report and making the comments herein, the Receiver has relied upon unaudited financial information, the books and records of the Debtor, discussions with management and employees of the Debtor and information received from third-party

sources (collectively, the “**Information**”). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by the Debtor, or other parties, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

## **RECEIVER’S ACTIVITIES**

8. As detailed herein, the Receiver’s primary focus has been to obtain site plan approval and the registration of the Plan of Subdivision for the Real Property, and to market the Real Property for sale. A summary of the Receiver’s significant activities is set out below:
  - (a) consulting with the City of Guelph (the “**City**”) to ascertain property tax arrears and arranging for payment of same;
  - (b) finalizing and entering into a settlement agreement with Wellington Vacant Land Condominium Corporation No. 169 (“**WCC169**”) in respect of the cost-sharing agreement entered into by the Debtor in connection with the common elements of WCC169, including a sewage pumping station, sanitary sewer stub, sewage force main, standby generator and a stub road known as Lane located on the lands described as WCC169, which are part of the services required to be installed pursuant to the site plan agreement with the City, and making payment on the

outstanding amount payable to WCC169 in the sum of \$146,345.66 (inclusive of HST);

- (c) retaining and meeting with Strik Baldinelli Moniz (“**SBM**”), structural and civil engineers, and Mr. Darren Morita, P.Eng., land development manager, Dunsire Developments, to assist the Receiver and to prepare for various meetings/correspondence with Kieswetter Excavating Inc. (“**Kieswetter**”)<sup>1</sup>, Guelph Hydro, and the City, to move the project forward, including coordinating receipt of reports from all sub-contractors in order to complete and formalize the submissions to satisfy the conditions of the Draft Plan Approval;
- (d) initial meetings with SBM, Kieswetter, and MZG to determine the exact status of the Kieswetter contract as at date of the Receiver’s appointment and to get Kieswetter and other subcontractors back to the site as quickly as possible;
- (e) negotiating placements of cash security with the City (\$43,750) and Guelph Hydro (\$187,509) in lieu of the letters of credit that had been provided to them by the Debtor. This necessitated obtaining releases from the parties who had guaranteed the initial letters of credit.;
- (f) arranging for an appraisal of the Real Property;
- (g) doing all things necessary to market the Real Property for sale;

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<sup>1</sup> Kieswetter was retained by the Debtor to complete the site servicing for the Property.



- (h) receipt and review of letters of intent (“**LOIs**”) and offers to purchase the Real Property;
- (i) discussions with interested parties comparing the LOIs and offers;
- (j) negotiating the APS for the sale of the Real Property to the Purchaser;
- (k) communicating and meeting with various engineering professionals and contractors to commence work toward clearing the various conditions required for Draft Plan approval;
- (l) liaising with surveyors and obtaining quotes for completion of topographical work;
- (m) corresponding with the City regarding an extension to the lapse date for submission of Draft Plan for approval;
- (n) obtaining a legal opinion on the validity and enforceability of security held by various mortgagees against the Real Property and having discussions with GSNH regarding same; and
- (o) drafting this First Report.

9. As at the date of this First Report, there are many conditions that still have to be cleared in respect of the Draft Plan and consequently, the Draft Plan has not yet been approved or registered by the City.

## MARKETING PROCESS AND OFFERS RECEIVED

10. In January 2018, the Receiver commenced its marketing efforts for the Real Property by establishing a data room with information regarding the Real Property and advertising the sale of the Real Property in the National Post on January 25, 2018 and February 1, 2018 (collectively, the “**Newspaper Advertisements**”).
11. The Receiver sent out a brochure marketing the Real Property for sale (the “**Marketing Brochure**”) to 465 parties that were either referred to the Receiver by third parties or part of the Receiver’s network of contacts. Copies of the Newspaper Advertisements and the Marketing Brochure are collectively attached hereto as **Appendix “C”**.
12. The Receiver prepared confidentiality agreements (“**CA**”), a confidential information memorandum (the “**CIM**”), and a form of agreement of purchase and sale to be sent to parties that executed a CA. 38 CAs were executed by interested parties and returned to the Receiver. The Receiver sent to each of these parties a copy of the CIM and provided each party with access to a password protected data room. The data room contained, among other things, copies of the CIM, the Draft Plan conditions, engineering and environmental reports, additions of Draft Plan approval, and information on planning and property taxes.
13. The Receiver set February 28, 2018 as the date for submission of offers (the “**Bid Deadline Date**”). Prior to the Bid Deadline Date, the Receiver contacted all of the parties that had accessed the data room to ascertain whether there was any additional information that they required in order to make a decision and whether they would be making offers on the Real Property.

14. In connection with its marketing efforts, the Receiver has obtained an appraisal on the Real Property from Antec Appraisal Group (the “**Appraisal**”). The Receiver will be filing the Appraisal with the Court as **Confidential Appendix 1**.
15. Two parties provided offers to the Receiver by the Bid Deadline Date. However, the purchase price in both offers was unacceptable to the Receiver, and the Receiver asked each offeror to improve their submission. One offeror (“**Offeror 1**”) decided not to resubmit an offer, while the second offeror (“**Offeror 2**”) resubmitted a revised letter of intent (“**LOI**”), as opposed to using the Receiver’s template agreement of purchase and sale. A summary of Offeror 1’s submission will be filed with the Court as **Confidential Appendix 2**.
16. Offeror 2 submitted an LOI dated March 7, 2018. A copy of Offeror 2’s LOI will be filed with the Court as **Confidential Appendix 3**.
17. The Receiver entered into negotiations with Offeror 2 and its solicitors to have them prepare an offer in the form of the template agreement of purchase and sale prepared by the Receiver. To date, the Receiver has not received an agreement of purchase and sale from Offeror 2.
18. Prior to the Bid Deadline Date, Mr. Shawn Keeper, president of the Debtor, indicated that he was trying to refinance the project and would be making an offer to the Receiver. While he was unable to make an offer prior to the Bid Deadline Date, the Receiver received an agreement of purchase and sale dated April 1, 2018 from the Purchaser, a company that the Receiver understands is owned by Mr. Keeper.

## COMPARISON OF THE OFFER AND LOI

19. The Receiver reviewed the LOI received from Offeror 2 and the offer received from the Purchaser. For the reasons set out below, the Receiver accepted the offer received from the Purchaser and, following negotiations with respect to the terms of the agreement of purchase and sale, on May 4, 2018, the Receiver entered into the APS with the Purchaser. A copy of the APS, with the financial terms redacted, is attached hereto as **Appendix "D"**. An unredacted copy of the APS will be filed with the Court as **Confidential Appendix 4**.
20. The LOI from Offeror 2 had a purchase price that was materially greater (approximately 30%) than the purchase price under the APS. However, the Receiver decided to accept the offer from the Purchaser rather than the LOI from Offeror 2 for the following reasons:
- (a) **Only Offer** – the APS is the only offer to purchase the Real Property, as Offeror 2 only submitted an LOI;
  - (b) **Due Diligence** - the APS is not conditional on due diligence, and the Purchaser is a corporation owned by Mr. Keeper, the principal of the Debtor. The LOI from Offeror 2 was conditional on a 45-day due diligence period following receipt of all required documents to review the material and investigate the Real Property. Offeror 2 had the right to terminate the transaction during the due diligence period;
  - (c) **Deposit** – the deposit to be received from the Offeror was an immaterial amount given the amount of the proposed purchase price, and the deposit would be returned to Offeror 2 if it terminated the transaction during the due diligence period. The Purchaser has provided a deposit in the amount of 5% of the purchase price;

- (d) **Financing** – the APS is not conditional on financing, and the Purchaser has provided evidence to the Receiver that it has arranged the necessary financing to complete its purchase of the Real Property;
- (e) **Site Servicing** – the Purchaser is acquiring the Real Property on an “as is, where is” basis, and no further work is required to be completed by the Receiver. The LOI from Offeror 2 was conditional on the Receiver completing all site servicing, grading and off site works for the Real Property, which would have required the Receiver incurring a significant amount of costs, estimated, based on the Appraisal, to be between \$1.2 million and \$1.6 million, which accounts for a large part of the difference in the purchase prices; and
- (f) **Assumption of Liabilities** – the Purchaser has agreed to (i) assume the contract between the Debtor and Kieswetter to complete the servicing of the Real Property; (ii) assume 14 of the 26 agreements of purchase and sale that were entered into by the Debtor with respect to dwellings to be constructed on the Real Property; and (iii) be liable to refund the deposits to the purchasers whose agreements of purchase and sale will not be assumed by the Purchaser and will be terminated, and will pay a bonus payment to each of these purchasers in an amount equal to 25% of their respective deposits, by December 31, 2018.

21. As detailed below, MZG is the first mortgagee of, and has the primary economic interest in, the Real Property. MZG has informed the Receiver that it supports the Receiver entering into the APS with the Purchaser.

22. The Receiver is of the view that the APS 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, as described herein;
- (b) the APS represents the only offer received for the Real Property; and
- (c) the APS represents the best realization for the Real Property for the Debtor's stakeholders, which includes MZG, Kiewswetter, and the purchasers of units.

## MORTGAGEES

23. A title search for the Real Property dated November 27, 2017 discloses the following mortgages registered against the Real Property:

- (a) Instrument No. WC472869 registered June 27, 2017 is a Charge/Mortgage in favour of MZG securing the principal amount of \$16,000,000 (the "**First Mortgage**"). The First Mortgage is expressed to be collateral security for obligations referred to in a mortgage commitment dated May 9, 2016, as amended from time to time; and
- (b) Instrument No. WC394834 registered on January 17, 2014 is a Charge/Mortgage in favour of Sorrenti Law Professional Corporation as bare trustee, securing the principal amount of \$1,731,000 and bearing interest at the rate of 8% per annum (the "**Second Mortgage**"). The Second Mortgage has a maturity date of August 14, 2016.<sup>2</sup>

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<sup>2</sup> The Receiver understands that the Second Charge was granted in connection with a syndicated mortgage loan, and as a result the charge has been transferred a number of times.

24. A Postponement of Interest was registered on June 28, 2016 as Instrument Number WC472884 in which the Second Mortgage was postponed in favour of the First Mortgage. There are no other charges/mortgages registered on title to the Real Property.
25. The Receiver has received a legal opinion (the “**Legal Opinion**”) from GSNH that, subject to the assumptions and qualifications contained in the Legal Opinion, the First Mortgage and the Second Mortgage are valid and enforceable against the Real Property and also a trustee in bankruptcy, and that the First Mortgage has priority over the Second Mortgage. A copy of the Legal Opinion is attached hereto as **Appendix “E”**.
26. The Second Mortgage is held by the mortgagee in trust for Fortress Real Developments Inc. (“**Fortress**”). The Receiver understands that representatives of MZG and Chaitons have been in contact with Fortress representatives to advise them of the status of offers, and that Fortress might not recover any monies towards their indebtedness based on the offers received. Notwithstanding that both Chaitons and MZG were advised that an offer for the Real Property would be forthcoming from Fortress, no such offer has been received to date.
27. The Receiver requested updated statements of account from MZG with respect to the First Mortgage, a copy of which is attached hereto as **Appendix “F”**.

#### **RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

28. Attached as **Appendix “G”** is the Receiver’s Interim Statement of Receipts and Disbursements (“**R&D**”) for the period December 6, 2017 to May 8, 2018. During this period, receipts, including \$1,596,972.90 advanced to the Receiver by MZG, were \$1,829,308.87 and disbursements were \$1,782,689.67, resulting in a net cash balance of

\$46,619.20. The Receiver is also in possession of a \$361,500.00 deposit from the Purchaser, which is being held in trust in a separate trust account.

## **PROFESSIONAL FEES**

29. The Receiver's accounts total \$91,976.00 in fees and \$206.09 in disbursements, plus HST of \$11,983.68, for a total amount of \$104,165.77 from December 6, 2017 to April 15, 2018 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per account and the average hourly rate charged per account, is set out in the Affidavit of Bryan A. Tannenbaum that is attached hereto as **Appendix "H"**.
30. The accounts of the Receiver's counsel, Chaitons, total \$22,496.54 in fees and disbursements and \$2,884.92 in HST for a total of \$25,381.46 (the "**Chaitons Accounts**") for the period ended April 30, 2018. A copy of the Chaitons Accounts, together with a summary of the personnel, hours and hourly rates described in the Chaitons Accounts, is set out in the Affidavit of Harvey Chaiton that is attached hereto as **Appendix "I"**.
31. The accounts of the Receiver's counsel for the independent legal opinion, GSNH LLP total \$5,803.41 in fees and disbursements, plus HST of \$754.44, for a total amount of \$6,557.85. A copy of the account, together with a summary of the personnel, hours and hourly rates described in the account, is set out in the Affidavit of Michael Rotsztain that is attached hereto as **Appendix "J"**.



**SEALING**

32. The Receiver will be requesting that the Court grant an order sealing the confidential appendices referred to above 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.

**REQUESTS OF THE COURT**

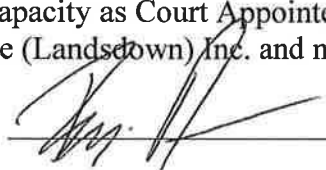
33. The Receiver respectfully requests that the Court grant the orders described in paragraph 6(d) hereof.

All of which is respectfully submitted to this Court as of this <sup>TH</sup> / / day of May, 2018.

**RSM CANADA LIMITED**

in its capacity as Court Appointed Receiver of  
Dunsire (Landsdown) Inc. and not in its personal capacity

Per:

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