

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

MOTION RECORD

(Returnable November 27, 2020)

November 17, 2020

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SERVICE LIST

(current as of November 17, 2020)

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TAB 1

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

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

NOTICE OF MOTION

THE RECEIVER, RSM Canada Limited (the “Receiver”), will make a motion before a Judge of the Ontario Superior Court of Justice on November 27, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Elizabeth Rathbone at elizabeth.rathbone@paliareroland.com. When e-mailing Ms. Rathbone to confirm whether you will be participating on the motion, ensure that you have provided your name, email address and the identity of the party you represent and their interest.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference due to the COVID-19 crisis.

THE MOTION IS FOR:

1. An Order:
 - (a) declaring that the Condominium Corporation (defined below) has no right to collect from the Fernwood Tenants (defined below) any monthly rent from the date of the receivership forward;
 - (b) directing the Condominium Corporation to disgorge and pay over to the Receiver any and all rents collected from the Fernwood Tenants for the period from November 1, 2020 forward and to provide the Receiver with an accounting of the rents collected from November 1, 2020 forward;
 - (c) costs of this motion on a substantial indemnity basis; and,
 - (a) such further relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:**A. *Background***

2. Fernwood was the developer of a 94-unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the "**Development**"). Each of the three phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units in these two phases of the Development (the "**Fernwood Owned Units**");

3. MarshallZehr Group Inc. (“**MZG**”) provided Fernwood with a loan of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The Loan was repayable on demand and matured on September 1, 2019;

4. Fernwood did not repay the Loan. MZG brought an application for the appointment of a receiver under the *Bankruptcy Insolvency Act* (“**BIA**”). On February 12, 2020, the Court issued the Appointment Order in which RSM was appointed as Receiver;

5. The Receiver subsequently sought and received court authorization to file an assignment in bankruptcy on behalf of Fernwood. The assignment in bankruptcy, in which RSM was named Trustee in Bankruptcy of the Estate of Fernwood, was filed on July 29, 2020;

6. At the outset of the Receiver’s appointment, approximately 44 beds (out of 104) were rented out, to tenants who are primarily students attending Georgian College. At the end of October 2020, there were 60 tenants in the Fernwood Owned Units (the “**Fernwood Tenants**”);

B. Condominium Corporation Demands Payment of Arrears in Violation of Stay

7. Simcoe Standard Condominium Corporation No. 420 (the “**Condominium Corporation**”) was enacted in 2016, after registration of the Development;

8. Fernwood had not paid common area fees to the Condominium Corporation in respect of the Fernwood Owned Units for the period from

December 2018 to February 2020 in respect of the Fernwood Owned Units. The Receiver paid common area fees for 25 units for the period December 2019 through November 2020 and the common area fees for 1 unit for the period March 2020 to November 2020;

9. On October 13, 2020, Ms. Sonja Hodis, counsel to the Condominium Corporation, emailed the Receiver to advise that:

- (a) there were arrears totaling \$76,815.00, plus interest and costs, and that these arrears were not covered by the release agreement between the Receiver and Condominium Corporation;
- (b) Ms. Hodis had notified the Fernwood Tenants at the 26 units in SSCC No. 420 that the owner is in arrears and directed them pursuant to s. 87 of the *Condominium Act* to forward their rents to SSCC No. 420 c/o Bayshore Property Management until the arrears have been paid (the “**Hodis Rent Letter**”);
- (c) once the Condominium Corporation received payment for these arrears, interest and costs the Condominium Corporation would notify the Fernwood Tenants to stop sending their rental payments to SSCC No. 420 and to commence sending payment to the Receiver once again;
- (d) offered for the Receiver to make arrangements to pay the total amount owing in one lump sum payment; and

- (e) an accounting of all monies received would be provided to the Receiver;
10. The Hodis Rent Letter caused confusion among the Fernwood Tenants;
11. On October 15, 2020, the Receiver's counsel wrote to Ms. Hodis (the "**October 15th Letter**") to, among other things, state that the steps take by the Condominium Corporation were an improper attempt to upend the existing priorities under the *BIA*. The October 15th Letter further advised that unless correspondence was sent by October 16, 2020 to the Fernwood Tenants withdrawing the Condominium Corporation's demand for payment, the Receiver would immediately schedule a hearing before the Court and seek costs against the Condominium Corporation;
12. Ms. Hodis responded to the October 15th Letter to reassert the Condominium Corporation's purported right to collect the rent;
13. On October 16, 2020, the Receiver's counsel responded to Ms. Hodis's October 15, 2020 letter and reiterated the Receiver's demand that the Condominium Corporation cease its attempts to interfere with the stay of proceedings under the receivership and bankruptcy;
14. The Condominium Corporation has refused to acknowledge that it has no right to redirect the rent payments;
15. On October 27, 2020, the Receiver sent correspondence to the Fernwood Tenants (copying Ms. Hodis) to, among other things, request that the Fernwood

Tenants withhold payment of rent until such time as the Court made a determination about the party to whom rent should be paid;

C. Statutory and other grounds

16. Rules 1.04, 2.03, 3.02(1), 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;

17. Sections 69.3, 69.4, 243, and 249 of the *Bankruptcy Insolvency Act*, R.S.C. 1985, c. B-3, and

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

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

- (a) the Second Report of the Receiver dated November 16, 2020 and the appendices attached thereto; and
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 17, 2020

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Lawyers for the Receiver

TO: THE SERVICE LIST

Schedule "A"

Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/83519523165?pwd=SWdETllyclpiYWZ3KzNyN09XeHQtUT09>

Meeting ID: 835 1952 3165

Passcode: 810743

MARSHALLZEHR GROUP INC.**-and-****FERNWOOD DEVELOPMENTS (ONTARIO)
CORPORATION
Respondent****Applicant**

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

NOTICE OF MOTION

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Lawyers for the Receiver, RSM Canada Limited

TAB 2

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

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

SECOND REPORT OF THE RECEIVER

NOVEMBER 17, 2020

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Appendix K – October 16 th Letter
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INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by Fernwood, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
 - a) take possession and exercise control over 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 Fernwood, including the powers to enter into any 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 Fernwood;
 - c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by the Appointment Order; and

- d) receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor.
3. In accordance with paragraph 25 of the Appointment Order, the Receiver has retained Chaitons LLP ("**Chaitons**") as its legal counsel for this receivership proceeding, except in circumstances where independent legal advice is required by the Receiver. The Receiver's independent legal counsel is Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**").
4. On June 30, 2020, the Receiver issued its first report to the Court (the "**First Report**") for the purpose of, among other things, seeking an Order:
- a) authorizing the Receiver to pay the Condominium Corporation (defined below) \$76,807 in connection with condominium liens and expenses owed since the date of the Receiver's appointment; and
 - b) approving the Receiver's proposed sale process for the Property described in the First Report (the "**Sale Process**").

A copy of the First Report, without appendices, is attached hereto as Appendix "**B**".

5. On July 6, 2020, the Applicant filed a Notice of Motion seeking an Order authorizing and directing the Receiver to file an assignment in bankruptcy in the name of and on behalf of Fernwood.

6. On July 7, 2020, the Court granted Orders, *inter alia*:
 - a) authorizing the payment of \$76,807 to the Condominium Corporation and approving the Sale Process (the “**Sale Process Order**”); and
 - b) authorizing and directing the Receiver to take the steps necessary to file an assignment in bankruptcy in the name of and on behalf of Fernwood (the “**Assignment Order**”).

Copies of the Sale Process Order and the Assignment Order are attached hereto as Appendices “**C**” and “**D**” respectively.

7. The assignment in bankruptcy, in which RSM was named Trustee in Bankruptcy of the Estate of Fernwood, was filed by the Receiver on July 29, 2020. A copy of the Trustee’s Certificate of Appointment issued by the Office of the Superintendent of Bankruptcy is attached hereto as Appendix “**E**”.
8. The Appointment Order, the First Report and other Court documents related to the receivership and bankruptcy proceedings, have been posted on the Receiver’s website, which can be found at <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.

PURPOSE OF THE SECOND REPORT

9. The purpose of this second report of the Receiver (the “**Second Report**”) is to:
 - a) inform the Court of the payment by the Receiver of all amounts owed to the Simcoe Standard Condominium Corporation No. 420 (the “**Condominium**”

Corporation") in full and final satisfaction of its liens registered against the Fernwood Owned Units (defined below);

- b) inform the Court of correspondence sent by counsel to the Condominium Corporation to tenants (the "**Fernwood Tenants**") of the 26 units owned by Fernwood (the "**Fernwood Owned Units**") directing the Fernwood Tenants to pay rent to the Condominium Corporation c/o its property manager, Bayshore Property Management ("**Bayshore**"), including the subsequent communications between the Receiver and/or its counsel and counsel to the Condominium Corporation, as well as the Receiver's correspondence to the Fernwood Tenants;
- c) provide the Court with information regarding the transition of utility accounts from the Receiver to the Condominium Corporation; and
- d) request that the Court grant an Order:
 - i. declaring that the Condominium Corporation has no right to collect from the Fernwood Tenants any monthly rent from the date of the receivership forward;
 - ii. directing the Condominium Corporation to disgorge and pay over to the Receiver any and all rents collected from the Fernwood Tenants for the period from November 1, 2020 forward and to provide the Receiver with an accounting of the rents collected from November 1, 2020 forward; and

- iii. costs of this motion on a substantial indemnity basis.

TERMS OF REFERENCE

10. In preparing this Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in the Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, 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.
11. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.
12. Defined terms in the Second Report have, unless indicated otherwise herein, the same meanings as set out in the First Report.

BACKGROUND

13. Fernwood was the developer of a 94-unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the “**Development**”). Each of the three

phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units in these two phases of the Development (referred to above as the Fernwood Owned Units).

14. Phase 3, which consists of 32 residential units, is incomplete and in various stages of construction. The residential units in Phase 3 have yet to be sold by Fernwood and are not subject to agreements of purchase and sale.
15. MarshallZehr Group Inc. (“**MZG**”) provided Fernwood with a loan of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The loan was repayable on demand and matured on September 1, 2019.
16. MZG’s security over Fernwood’s property and assets include a charge/mortgage in the principal amount of \$22 million and a general assignment of leases and rent, both of which are registered on title to the Fernwood Owned Units and Phase 3 of the Development, and a general security agreement.
17. On January 21, 2020, MZG demanded repayment of the Loan from the Debtor and sent a Notice of Intention to Enforce Security pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).
18. Fernwood did not repay the Loan. MZG brought an application for the appointment of a receiver. On February 12, 2020, the Court issued the Appointment Order in

which RSM was appointed as Receiver. Fernwood did not oppose the appointment of the Receiver.

THE FERNWOOD OWNED UNITS

19. Each of the 26 Fernwood Owned Units consists of a living area, 4 bedrooms and 4 bathrooms and one parking space. The maximum bed rental capacity is 104 beds.
20. At the outset of the Receiver's appointment, approximately 44 beds were rented out by Pensio Global, the property manager engaged by Fernwood prior to the Receiver's appointment, to tenants who are primarily students attending Georgian College.
21. As set out in the Receiver's First Report, at the end of March 2020 the Receiver terminated its engagement of Pensio Global. From April 1, 2020 forward, the Receiver has engaged Subhkin Property Management ("**Subhkin**") as property manager.
22. During the course of the receivership administration, Subhkin has attended to many repairs required in the Fernwood Owned Units, advertised the Fernwood Owned Units for rent on Kijiji, screened prospective tenants and established a rapport and relationship with the Fernwood Tenants. As at the end of October 2020, there were 60 tenants in the Fernwood Owned Units.

THE CONDOMINIUM COPORATION

23. The Receiver understands that the Condominium Corporation was enacted in 2016, after registration of the Development.

Common Area Fees – Liens

24. The First Report sets out the correspondence between the Receiver and the Condominium Corporation with respect to the liens that had been registered by the Condominium Corporation against the Fernwood Owned Units and the agreement reached between the parties for the Receiver to pay \$76,807 to the Condominium Corporation.
25. On July 3, 2020, the Condominium Corporation's Board of Directors signed a full and final release (the "**Release Agreement**") in respect of the lien amounts to be held in escrow by counsel. A copy of the Release Agreement is attached hereto as Appendix "**F**".
26. In accordance with the Sale Process Order, on July 8, 2020, the Receiver paid \$76,807 to the Condominium Corporation.
27. On July 10, 2020, Ms. Sonja Hodis, counsel to the Condominium Corporation, confirmed by email to Chaitons that the funds had been deposited and that the Condominium Corporation would be instructing Ness Law to discharge the liens.
28. Chaitons has confirmed that the Condominium Corporation has provided discharge instruments for all 25 Fernwood Owned Units.

Common Area Fees – Unsecured Claims

29. As set out in the First Report, Fernwood had not paid common area fees to the Condominium Corporation in respect of the Fernwood Owned Units for the period from December 2018 to February 2020. The Receiver paid the common area fees for 25 units for the period December 2019 through November 2020 and the common area fees for 1 unit for the period March 2020 to November 2020.
30. On August 21, 2020, Bayshore notified all owners of units in the Development that pursuant to S. 83(1) of the *Condominium Act*, the owners were obligated to provide Bayshore with specific information, including details of lessees' names and copies of leases (the "**Information Notice**"). The Receiver immediately requested of Subhkin that it compile the information requested by Bayshore. A copy of the Information Notice is attached hereto as Appendix "**G**".
31. On September 14, 2020, the Receiver provided Bayshore with the requested information pursuant to the Information Notice; however, Bayshore informed the Receiver that the tenant information was not in the form requested.
32. On October 1, 2020, the Receiver provided Bayshore with the information it requested in the specific form required by Bayshore, consisting of 58 pages of information, including details of specific units, tenant names, the amount of monthly rent to be paid, the duration of any leases or if the tenants were occupying on a month-to-month basis and other details.
33. On October 13, 2020, Ms. Hodis emailed the Receiver to advise, among other things, that:

- a) there were arrears totaling \$76,815.00, plus interest and costs, and that these arrears were not covered by the Release Agreement;
- b) she had notified the Fernwood Tenants at the 26 units in SSCC No. 420 that the owner is in arrears and directed them pursuant to s. 87 of the *Condominium Act* to forward their rents to SSCC No. 420 c/o Bayshore Property Management until the arrears have been paid;
- c) once the Condominium Corporation received payment for these arrears, interest and costs, the Condominium Corporation would notify the Fernwood Tenants to stop sending their rental payments to SSCC No. 420 and to commence sending payment to the Receiver once again;
- d) the Condominium Corporation was offering the Receiver to make arrangements to pay the total amount owing in full in one lump sum payment; and
- e) an accounting of all monies received by the Condominium Corporation would be provided to the Receiver.

A copy of Ms. Hodis' email to the Receiver of October 13, 2020 and a redacted sample letter sent by her to the Fernwood Tenants (the "**Hodis Rent Letter**") is attached hereto as Appendix "**H**".

34. On October 14, 2020, Subhkin advised that it had received phone calls and emails from many Fernwood Tenants and their parents about the Hodis Rent Letter. These parties were confused by the Hodis Rent Letter and some of these parties

interpreted the Hodis Rent Letter as stating that Subhkin, notwithstanding collection of the Fernwood Tenants' rent, had not paid common area fees to the Condominium Corporation. Subhkin has advised that one Fernwood Tenant, on a month-to-month arrangement, advised that it was vacating its unit at the end of October 2020 as a result of its receipt of the Hodis Rent Letter as it did not want to be involved in any legal dispute between the Condominium Corporation and the Receiver.

35. On October 15, 2020, Paliare Roland wrote to Ms. Hodis (the "**October 15th Letter**") to, among other things, state that the steps take by the Condominium Corporation were an improper attempt to upend the existing priorities under the BIA. The October 15th Letter further advised that unless correspondence was sent to the Fernwood Tenants by October 16, 2020 withdrawing the Condominium Corporation's demand for payment, the Receiver would immediately schedule a hearing before the Court and seek costs against the Condominium Corporation. A copy of the October 15th Letter is attached hereto as Appendix "I".
36. Ms. Hodis responded to the October 15th Letter (the "**October 15th Response Letter**") that, among other things, S. 87 of the *Condominium Act* specifically allows the Condominium Corporation to approach tenants of a leased unit and demand that they redirect their rent to the condominium when there are arrears and provided case law to support her position (*Metropolitan Toronto Condominium Corp. No 1175 v. Irving A. Burton Ltd* ("**Burton**"). Ms. Hodis requested a copy of case law and statutory authority to the contrary. A copy of the October 15th Response Letter is attached hereto as Appendix "J".

37. On October 16, 2020, Paliare Roland responded to the October 15th Response Letter (the “**October 16th Letter**”) and articulated that in the Receiver’s view, the *Burton* decision was entirely distinguishable and reiterated the Receiver’s demand that the Condominium Corporation cease its attempts to interfere with the stay of proceedings under the receivership and bankruptcy. A copy of the October 16th Letter is attached hereto as Appendix “**K**”.
38. Subhkin informed the Receiver that the Fernwood Tenants had been requesting correspondence from the Receiver in respect of the position taken by the Condominium Corporation. Accordingly, on October 27, 2020, the Receiver sent correspondence to the Fernwood Tenants and copied Ms. Hodis (the “**Receiver’s October 27th Letter**”) to advise the Fernwood Tenants that: (i) the Receiver was aware of the letter sent to them on October 13, 2020 by Ms. Hodis; (ii) in the Receiver’s view, the steps taken by the Condominium Corporation were in direct violation of the Appointment Order and the BIA; and (iii) the Receiver had scheduled a court date on November 27, 2020 to seek an Order confirming that the Condominium Corporation is not permitted to collect rent from the Fernwood Tenants and to require the Condominium Corporation to pay to the Receiver any rents it collected. The letter also requested that the Fernwood Tenants withhold payment of rent until such time as the Court made a determination about the party to whom rent should be paid. A copy of the Receiver’s October 27th Letter is attached hereto as Appendix “**L**”.
39. Ms. Hodis responded to the Receiver on October 27, 2020 (the “**Hodis October 27th Response**”) that, among other things: (i) the Receiver’s correspondence

created more confusion for the tenants, created the possibility that tenants will not pay rent at all and increased costs being incurred by the Condominium Corporation; (ii) if the Condominium Corporation loses any payments or incurs additional costs as a result of this notification sent to the tenants, the Condominium Corporation will hold the Receiver responsible for those losses and costs and will continue to add those costs to the amounts owing for common expenses for the units in question; and (iii) that the issuance by the Receiver of correspondence to the Fernwood Tenants was not warranted or appropriate and was high handed.

A copy of the Hodis October 27th Response is attached hereto as Appendix “M”.

40. Although, the Receiver understands that Ms. Hodis and Bayshore have recently directed those Fernwood Tenants who have enquired that they should pay November 2020 rent, to the Receiver/Subhkin, the Receiver is seeking a declaration of the Court that it is the party entitled to receive the monthly payments, because the Condominium Corporation maintains its right to the rental payments.

Utilities

41. At the outset of the Receiver’s appointment, the main accounts for hydro, water and internet continued to be in the name of Fernwood. The Receiver has no information as to why these accounts were not turned over to the Condominium Corporation in 2016. As the Receiver did not want any interruption to or disconnection of service with respect to any utilities, the Receiver contacted the various utility suppliers and had the main accounts changed to the Receiver’s name effective from the date of the Receiver’s appointment.

42. After engaging in discussions on April 17, 2020 with two of the Directors of the Condominium Corporation and Bayshore regarding turnover of the water, hydro and internet accounts, the Receiver was told that the Condominium Corporation would assume responsibility for payment of liabilities for these services.
43. In view of the Condominium Corporation's position, the Receiver contacted the City of Barrie (the "**City**"), Alectra Utilities ("**Alectra**") and Rogers to seek their assistance to effect the turnover to the Condominium Corporation of the various utility accounts.
44. Set out below is the information that the Receiver has obtained from the aforementioned utility suppliers:
 - a) on June 18, 2020, the City advised the Receiver that its calls to Bayshore went unanswered and that the City changed the account holder for the main water account from the Receiver to the Condominium Corporation, effective May 7, 2020;
 - b) Alectra advised that the party assuming the hydro account would have to call Alectra's customer service department to have the account transferred. On August 4, 2020, Bayshore agreed to attend a conference call with the Receiver and Alectra for the purpose of changing the hydro account holder from the Receiver to the Condominium Corporation. The main hydro account was transferred by Alectra from the Receiver to the Condominium Corporation on August 5, 2020; and

- c) on September 10, 2020, Rogers informed the Receiver that after several months of discussions with the Condominium Corporation, Rogers could not come to an agreement with the Condominium Corporation on the assumption of the bulk services agreement for internet between Fernwood and Rogers. As a result, Rogers intended on terminating that agreement and bill each unit individually on a go forward basis. The new arrangement with Rogers is effective November 1, 2020 with respect to the Fernwood Owned Units. Charges for internet service to the Fernwood Owned Units for the period from the date of the Receiver's appointment to October 31, 2020 are currently being reviewed by Rogers.
45. The Receiver has recouped costs paid by it on behalf of third party unit owners in the Development for hydro and water through Priority Submetering Solutions ("**Priority**"), the sub-metering company utilized by Fernwood prior to the Receiver's appointment. Subsequent to the Receiver's appointment, the Receiver discussed the utilities with Priority who agreed to continue to bill on a monthly basis the Development unit owners for their portion of hydro and water. Priority has remitted to the Receiver the funds received by it, net of its charges, to the date that the utility accounts were turned over to the Condominium Corporation. The Receiver is currently being billed by and is paying Priority in the same manner as any other unit owner.

REQUESTS OF THE COURT

46. Based on the foregoing, the Receiver respectfully requests that the Court grant the order described in paragraph 9 (d) above.

All of which is respectfully submitted to the Court as of this 17th day of November, 2020.

RSM CANADA LIMITED

in its capacity as Court-appointed Receiver of
Fernwood Developments (Ontario) Corporation
and not in its personal capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

APPENDIX A

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)	WEDNESDAY, THE 12 th
)	
JUSTICE HAINEY)	DAY OF FEBRUARY, 2020

B E T W E E N:



MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

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

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing RSM Canada Limited as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (the "**Debtor**") acquired for, or

used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Murray Snedden sworn January 30, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and Pensio Property Management Group Inc., no one appearing for the Debtor, and on reading the consent of RSM Canada Limited to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, RSM Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any 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;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market 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;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any

applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *BIA*, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.5 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, 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 Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. **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.

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

FEB 12 2020

PER / PAR: *er*

[Handwritten signature]

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that RSM Canada Limited the receiver (the "**Receiver**") of the assets, undertakings and properties Fernwood Developments (Ontario) Corporation acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of February, 2020 (the "**Order**") made in an application having Court file number CV-20-00635523-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

RSM CANADA LIMITED, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION
Respondent
Court File No. CV-20-00635523-00CL

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

ORDER
(appointing Receiver)

CHAITONS LLP
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Lawyers for the Applicant

APPENDIX B

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

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

FIRST REPORT OF THE RECEIVER

JUNE 30, 2020

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INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation (“**Fernwood**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by Fernwood, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.

2. The Appointment Order authorizes the Receiver to, among other things:
 - (a) take possession and exercise control over 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 Fernwood, including the powers to enter into any 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 Fernwood;

 - (c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by the Appointment Order; and

- (d) receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor.
3. The Appointment Order empowers the Receiver to borrow by way of revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.5 million (or such greater amount as the Court may order), for the purpose of funding the administration of the receivership and the exercise of the Receiver's powers and duties.
4. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver's website, which can be found at <http://www.rsmcanada.com/fernwood-developments-ontario-corporation>.
5. In accordance with paragraph 25 of the Appointment Order, the Receiver has retained Chaitons LLP ("**Chaitons**") as its legal counsel for this receivership proceeding, except in circumstances where independent legal advice is required by the Receiver. The Receiver's independent legal counsel is Paliare Roland Rothstein Rosenberg LLP ("**Paliare Roland**").

PURPOSE OF THE FIRST REPORT

6. The purpose of this first report of the Receiver (the "**First Report**") is to:

- (a) report to the Court on the activities of the Receiver from February 12, 2020 (the “**Appointment Date**”) to the date hereof, which include, among other things:
- (i) communications with and request for information from Mr. Jordan Zukowski (“**Mr. Zukowski**”), the President and sole Director of Fernwood, and his legal counsel and with respect to certain information regarding a bank account opened by Fernwood with the Toronto-Dominion Bank (“**TD Bank**”), among other things;
 - (ii) the Receiver’s dealings with Fernwood’s property manager, Pensio Property Management Group Inc. and/or Pensio Global (“**Pensio**”), including Pensio’s retention of rent deposits paid by tenants of the Fernwood owned units in the Development (as defined below);
 - (iii) the Receiver’s request for information and documentation from Fernwood’s real estate counsel, Smith Valeriotte LLP (“**SV Law**”);
 - (iv) discussions the Receiver and/or Chaitons has had with Simcoe Standard Condominium Corporation # 240 (the “**Condo. Corp.**”), Condo. Corp.’s property manager, Bayshore Property Management Inc. (“**Bayshore**”), and the Condo. Corp.’s counsel regarding the payment of common area fee arrears and condominium liens registered by the Condo. Corp. against 25 units owned by Fernwood in the Development;

- (b) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period from February 12, 2020 to June 15, 2020 (the "R&D"); and
- (c) request the Court grant an Order or Orders:
 - (i) approving the Receiver's activities as set out in the First Report;
 - (ii) directing Pensio to pay to the Receiver \$30,258.06, which represents all rent deposits retained by Pensio in respect of the Fernwood owned units less the March 2020 property management fee payable to Pensio by the Receiver;
 - (iii) authorizing the Receiver to pay \$76,807 to the Condo Corp in connection with the condominium liens and outstanding common expenses owed since the Appointment Date;
 - (iv) approving the Receiver's proposed Sale Process (as defined below);
 - (v) approving the R&D; and
 - (vi) approving the fees and disbursements of the Receiver and Paliare Roland to May 31, 2020.

TERMS OF REFERENCE

7. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "Information"). Certain of the information contained in the First Report may refer to, or is based

on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, 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 *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

9. Fernwood is a corporation incorporated under the laws of the Province of Ontario and has its mailing address in Guelph, Ontario. A corporate profile report for Fernwood is attached hereto as **Appendix “B”**.
10. Fernwood is the developer of a 94-unit stacked townhouse phased condominium complex known as Schoolhouse Barrie (formerly known as Georgian Meadows), located in Barrie, Ontario (the “**Development**”). Each of the three phases of the Development consists of two buildings, for a total of six buildings. Phases 1 and 2 are complete and Fernwood has sold all but 26 residential units in these two phases of the Development (collectively, the “**Fernwood Owned Units**”).

11. Phase 3, which consists of 32 residential units, is incomplete and in various stages of construction. The residential units in Phase 3 have yet to be sold by Fernwood and are not subject to agreements of purchase and sale.
12. MarshallZehr Group Inc. (“**MZG**”) provided Fernwood with a loan of \$19.95 million (the “**Loan**”) pursuant to a commitment letter dated September 20, 2016, as amended. The loan was repayable on demand and matured on September 1, 2019.
13. MZG’s security over Fernwood’s property and assets include a charge/mortgage in the principal amount of \$22 million and a general assignment of leases and rent, both of which are registered on title to the Fernwood Owned Units and Phase 3 of the Development, and a general security agreement.
14. On January 21, 2020, MZG demanded repayment of the Loan from the Debtor and sent a Notice of Intention to Enforce Security pursuant to the provisions of the *Bankruptcy and Insolvency Act (Canada)*.
15. Fernwood did not repay the Loan. MZG brought an application with the Court for the appointment of a receiver. On February 12, 2020, the Court issued the Appointment Order in which RSM was appointed as Receiver. Fernwood did not oppose the appointment of the Receiver.

RECEIVER’S ACTIVITIES TO DATE

16. Set out below is a summary of the Receiver’s activities since its appointment, certain of which are discussed in greater detail later in the First Report:

- (a) immediately after its appointment, the Receiver contacted Mr. Zukowski to request a meeting. Mr. Zukowski advised that he was not able to meet with the Receiver until the following week;
- (b) attended at Fernwood's offices in Barrie, Ontario on February 20, 2020 and met with Mr. Zukowski (the "**Initial Meeting**") to discuss the receivership proceeding and to ascertain the location of Fernwood's books and records. Mr. Zukowski provided the Receiver with certain information, including details regarding Fernwood's bank accounts with Bank of Montreal ("**BMO**"). Mr. Zukowski advised the Receiver that the majority of Fernwood's books and records were with Royal City Bookkeeping Services Inc. ("**RCBS**");
- (c) wrote to BMO to request that all bank accounts in the name of Fernwood be frozen and to allow deposits, but no withdrawals from those accounts;
- (d) contacted RCBS to obtain additional information in respect of Fernwood, including the names, addresses and amounts owing to Fernwood's creditors, an aged accounts receivable listing and a balance sheet;
- (e) sent a Notice and Statement of Receiver pursuant to Section 245(1) of the Bankruptcy and Insolvency Act (the "**245 Notice**") to the known creditors of Fernwood via regular mail. The known creditors were compiled from a Personal Property Security Registration System search conducted by the Receiver and from a list of creditors provided by RCBS. A copy of the 245 Notice is attached hereto as **Appendix "C"**;

- (f) arranged for the redirection of mail from two addresses provided by Mr. Zukowski to the Receiver's business address. The mail redirection commenced on February 27, 2020;
- (g) opened an HST account with Canada Revenue Agency;
- (h) opened a trust account at BMO for the receipts and disbursements relating to the receivership administration;
- (i) contacted Pensio, Fernwood's property manager prior to the appointment of the Receiver, in order to ascertain Pensio's role and to request that Pensio assist the Receiver with collection of rents for the Fernwood Owned Units for the month of March 2020;
- (j) terminated Pensio's engagement as property manager and entered into a property management agreement with Subhkin Management Inc. ("**Subhkin**"), an independent property manager, to manage the Fernwood Owned Units and Phase 3 of the Development;
- (k) contacted the City of Barrie, Alectra Utilities and Rogers to open new accounts in the name of the Receiver in order that service to the Development was not interrupted; and
- (l) obtained a copy of Fernwood's insurance documents to review the current insurance coverage for the Development. The Receiver contacted Fernwood's insurer, Federated Insurance, and has been added as an

additional named insured and loss payee on Fernwood's insurance policies.

The current policy term expires on January 15, 2021.

BANK ACCOUNT AT TORONTO DOMINION BANK ("TD Bank")

17. On February 26, 2020, RCBS confirmed that Fernwood had two bank accounts with BMO and one account at TD Bank, bearing account # 5254264 (the "**TD Bank Account**"). RCBS further advised that it did not have any details for the TD Bank Account and that it would request bank statements from the TD Bank.
18. The existence of the TD Bank Account was not previously disclosed to the Receiver by Mr. Zukowski.
19. On February 26, 2020, the Receiver wrote to TD Bank to request that TD Bank freeze the TD Bank Account and any other accounts with TD Bank in the name of Fernwood. On February 27, 2020, TD Bank confirmed that the TD Bank Account was frozen. The TD Bank Account is discussed in more detail below.
20. On February 28, 2020, TD Bank provided the Receiver with a printout setting out the transactions relating to the TD Bank Account (the "**TD Statement**"), which account was opened on October 28, 2019. As at January 21, 2020, the TD Bank Account had an overdraft balance of \$22.01.
21. The Receiver reviewed the TD Statement and notes that:
 - (a) on October 28, 2019, there was a deposit of \$531,363.09 (the "**Deposit**") to the TD Bank Account; and

- (b) on October 31, 2019 and November 5, 2019, amounts of \$250,000 and \$225,000, respectively, were transferred (the “**Transfers**”) from the TD Bank Account to bank account bearing account number 6464509 (the “**646 Account**”), which account is also with TD Bank.
22. On March 2, 2020, the Receiver wrote to RCBS requesting information on how the Deposit and Transfers were recorded in Fernwood’s general ledger. RCBS advised the Receiver that the accounting for these transactions had not yet been completed.
23. On March 3, 2020, the Receiver wrote to RCBS to request further information from the books and records of Fernwood and to follow up on the TD Bank Account transactions. RCBS responded that it had not had the opportunity to gather the information and that the information would be provided to the Receiver shortly.
24. On March 4, 2020, RCBS informed the Receiver that RCBS was unwilling to provide the Receiver with any further information until its outstanding accounts with Fernwood were paid.
25. On March 6, 2020, the Receiver wrote to RCBS to advise that RCBS’ position in respect of non-provision of the information requested by the Receiver pending payment of its unpaid account was in breach of the Appointment Order and that the Receiver would seek an order for contempt and costs, if RCBS continued to withhold information in respect of Fernwood.

26. On March 9, 2020, RCBS responded to the Receiver that RCBS would review the Receiver's correspondence and get back to the Receiver.
27. After an exchange of correspondence between counsel for RCBS and the Receiver, on March 13, 2020, RCBS, through its counsel, agreed to provide the requested information by April 10, 2020.
28. On March 16, 2020, the Receiver wrote to Mr. Zukowski requesting further details of Fernwood's assets (the "**March 16th Letter**"), including the TD Bank Account. On March 18, 2020, Duncan, Linton LLP, counsel to Mr. Zukowski ("**Duncan, Linton**") wrote to the Receiver (the "**March 18th Letter**") to advise that, among other things, Mr. Zukowski was compiling a package of information relating to the TD Bank Account. Copies of the March 16th Letter and the March 18th Letter are attached hereto as **Appendices "D" and "E"**, respectively.
29. As both RCBS and Mr. Zukowski advised the Receiver that they required additional time to provide the Receiver with the information requested by the Receiver, including information on the TD Bank Account, the Receiver wrote to TD Bank on March 18, 2020 to request transaction details in respect of the Deposit and Transfers.
30. On March 19, 2020, TD Bank provided the Receiver with details on the Deposit and Transfers, as follows:
 - (a) TD Bank provided a copy of a cheque in the amount of \$531,363.09 from Tarion Warranty Corporation ("**Tarion**") payable to Fernwood (the "**Tarion**")

Cheque”), which cheque represents the Deposit. A copy of the Tarion Cheque is attached hereto as Appendix “F”; and

- (b) the 646 Account to which the Transfers were made is a joint personal account in the names of Mr. Zukowski and Rudi Zukowski, who the Receiver understands is Mr. Zukowski’s father.
31. The Receiver communicated with Tarion regarding the Tarion Cheque and was advised by Tarion that the Tarion Cheque represented a release of a portion of Tarion’s security over the Development, which security was previously provided to Tarion by Fernwood.
32. On March 23, 2020, Paliare Roland wrote to Duncan, Linton (the “**March 23rd Letter**”) to follow up on various outstanding information, including information about the TD Bank Account. A copy of the March 23rd Letter is attached hereto as **Appendix “G”**.
33. On March 26, 2020, the Receiver contacted TD Bank to see if TD Bank could provide the Receiver with details regarding the 646 Account. On March 27, 2020, TD Bank informed the Receiver that it could not provide details of the 646 Account without an order of the Court directing it to do so.
34. On March 27, 2020, Duncan, Linton wrote to Paliare Roland (the “**March 27th Letter**”) to advise, among other things, that all information in Mr. Zukowski’s possession concerning the TD Bank Account would be sent to the Receiver the

following week. A copy of the March 27th Letter is attached hereto as **Appendix “H”**.

35. On March 30, 2020, Paliare Roland wrote to Duncan, Linton to request that a response to the Receiver’s information request in respect of the TD Bank Account be provided by noon on April 1, 2020, as the Receiver had initially requested the information from Mr. Zukowski on March 16, 2020.
36. On April 1, 2020, Duncan, Linton provided Paliare Roland with a reconciliation (the **“Reconciliation”**) of the TD Bank Account, which is summarized below:

Receipts

Tarion deposit	<u>\$531,363.09</u>
----------------	---------------------

Disbursements

Utilities, insurance, accounting, bookkeeping and other Development Expenses	\$109,258.21
Corporate Mastercard	41,969.24
Smith Valeriote LLP (SV Law)	7,507.50
Duncan Linton LLP (Zukowski Counsel)	21,853.10
Schneider Ruggiero LLP	21,961.98
Employee wages and expenses	41,836.31
Expenses - Jordan Zukowski	63,926.06
Management fees - Jordan Zukowski	230,000.00
Management fees - Rudi Zukowski	158,200.00
Bank charges	<u>44.01</u>
Total expenses per reconciliation	<u>\$696,556.41</u>

Owed to Jordan Zukowski	<u>(\$165,193.32)</u>
-------------------------	-----------------------

37. On April 6, 2020, Paliare Roland wrote to Duncan, Linton (the **“April 6th Letter”**) to ask whether the management fees claimed by Mr. Zukowski and his father were accrued in Fernwood’s financial statements and to request receipts for the expenses claimed by Mr. Zukowski. On April 23, 2020 (the **“April 23rd Response**

Letter”), Duncan, Linton responded that the management fees were not accrued in Fernwood’s financial statements, but they were budgeted for. Duncan, Linton advised that receipts for Mr. Zukowski’s expenses would be provided once received from RCBS. To date, no expense receipts have been provided to the Receiver. Copies of the April 6th Letter and April 23rd Response Letter are attached hereto as Appendices “**I**” and “**J**”, respectively.

38. The Reconciliation does not reflect all the entries that concludes with the TD Bank Account overdraft balance of \$22.01 set out on the TD Statement, as the Reconciliation appears to reflect only certain of the transactions set out in the TD Statement.
39. The TD Statement sets out that on various dates, business expenses and bank charges totaling \$202,601.54 were paid from the TD Bank Account. The Receiver also notes that funds were transferred back to the TD Bank Account from the 646 Account in order to pay certain expenses. Based on the Receiver’s review, it appears that a net amount of \$328,761.55 was transferred to the 646 Account in favour of Mr. Zukowski and his father, Rudi.

PENSIO

40. As set out above, on the date of the Receiver’s appointment, Pensio was the property manager of the Development.
41. On February 18, 2020, Chaitons contacted Pensio’s counsel, Friedman Law Professional Corporation (“**Friedmans**”), to request from Pensio a breakdown and reconciliation detailing all rent that has been paid for each of the regarding the

Fernwood Owned Units to date. In addition, Chaitons advised Friedmans that all rents paid by tenants of the Fernwood Owned Units were to be sent to the Receiver, without deduction, in accordance with the Appointment Order.

42. On February 19, 2020, Friedmans provided to Chaitons, among other things, a rent roll for February 2020 and a reconciliation (the “**Pensio Reconciliation**”) based on information that was sent to Friedmans by Pensio. Friedmans requested that the Receiver directly contact Mr. Brandon Keks (“**Mr. Keks**”), Chief Operating Officer of Pensio, for any further information. According to the Pensio Reconciliation, after a series of advances made by Pensio to Fernwood, the net amount claimed by Pensio to be owed to it by Fernwood as at the date of the Receiver’s appointment is \$490,467. A copy of the Pensio Reconciliation is attached hereto as **Appendix “K”**.

43. On February 21, 2020, the Receiver discussed the Pensio Reconciliation with Mr. Keks. Based on that discussion, the Receiver understands the following:
 - (a) Pensio and/or its related companies, including Nationwide Rentsure Canada Corp. and Ai Guarantee Inc., entered into an agreement with Fernwood to provide a rental guarantee program (the “**Rental Guarantee Program**”) in order for Fernwood to be able to sell Development units at a premium, as well as property management services to Fernwood and other unit owners. The Rental Guarantee Program provided unit owners with a form of insurance such that the difference between rent collected on a particular unit and \$2,500 would be paid by Pensio to the unit owner.

Property management services were provided at a rate of 6% of rent collected by Pensio;

- (b) Mr. Keks claims that Fernwood owes Pensio approximately \$2.3 million, including HST, for fees related to the Rental Guarantee Program plus an additional \$1.0 million fee for assistance with settling a potential lawsuit for breach of contract and non-payment of real estate commissions between Keller Williams Realty, the initial real estate broker engaged by Fernwood, and Fernwood. Mr. Keks indicated that the fees of \$2.3 million in respect of the Rental Guarantee Program were payable to Pensio in advance of the sale of any of the units in the Development. Based on the Pensio Reconciliation, it appears that Fernwood paid Pensio \$1.4 million, resulting in the balance of \$1.9 million being unpaid and outstanding; and
- (c) as Fernwood did not pay the full amount claimed by Pensio, commencing in June 2017, Pensio started retaining rents collected and applying the amounts collected against its outstanding fees. As the Receiver understood that Fernwood provided a general assignment of leases and rents in favour of MZG, the Receiver requested that Mr. Keks provide the Receiver with documentation evidencing MZG's consent to Pensio retaining the rents collected and offsetting them against its outstanding fees. Mr. Keks advised that while there was no formal signed agreement, MZG agreed to this practice. Pensio provided an email exchange between Murray Snedden of MZG and John Hamilton of Pensio between February 25 and 28, 2019. A copy of the email exchange is attached hereto as **Appendix "L"**.

44. The Receiver advised Mr. Keks that the Receiver would not be paying Pensio's claim of \$490,467, but that it may be willing to continue with Pensio as property manager of the Fernwood Owned Units. In addition, the Receiver further advised Mr. Keks that there may be some additional role in the receivership administration for Pensio, including providing assistance to the Receiver to sell the Fernwood Owned Units, depending on the circumstances.
45. During March 2020, the Receiver obtained further information from various sources regarding Pensio and its relationship with Fernwood and MZG. On the basis that there appeared to be various disagreements and issues amongst the parties, the Receiver concluded that the appointment of an independent property manager was appropriate.
46. On March 25, 2020, the Receiver advised Pensio that, effective from April 1, 2020, the Receiver engaged Subhkin to act as the property manager over the Fernwood Owned Units. During the period March 25, 2020 to March 31, 2020, Subhkin transitioned property management duties from Pensio.
47. On April 1, 2020, the Receiver emailed Pensio to request that tenant rent deposits for March 2020 (the "**Rent Deposits**") be paid to the Receiver. The Receiver's understanding, based on the leases reviewed by Subhkin, was that the Rent Deposits in the possession of Pensio totaled approximately \$55,000. Mr. Keks advised the Receiver that Pensio was completing a reconciled accounting for all the investor owners in the Development in addition to the Fernwood Owned Units.

After the Receiver's follow up emails, Mr. Keks advised the Receiver on April 7, 2020 that a reconciliation would be provided to the Receiver on April 8, 2020.

48. On April 6, 2020, it came to the Receiver's attention that on April 3, 2020 Pensio sent an email to the tenants of the Fernwood Owned Units requesting that they pay their April 2020 rent to Pensio. The Receiver contacted Mr. Keks on this matter and requested that Pensio remit all rents collected for April 2020 to the Receiver. Mr. Keks advised that he was not aware of the request to tenants and that an automated message was likely sent out from Pensio's property management system. Mr. Keks subsequently advised the Receiver that any rents collected for April 2020 by Pensio had been returned to the applicable tenant(s). Subhkin has subsequently contacted all tenants in Fernwood Owned Units to collect rent for April 2020, as appropriate.
49. In March 2020, Pensio collected rent in respect of the Fernwood Owned Units totaling \$48,480 and remitted same to the Receiver. The Receiver's arrangement with Pensio was to pay 6% of rent collected by Pensio as a property management fee. Mr. Keks, on several occasions, has pressed the Receiver to pay its property management fee totaling \$3,286.94, including HST. The Receiver responded that it would not pay the fee as Pensio had not remitted the Deposits to the Receiver.
50. On April 14, 2020, the Receiver followed up with Mr. Keks to confirm that it had not received any reconciliation, nor had any of the rent deposits held by Pensio been sent to the Receiver.

51. On April 15, 2020, Mr. Keks wrote to the Receiver (the “**April 15th Email**”) and provided a reconciliation of the rent deposits held by Pensio, which totaled \$33,545, and advised that Pensio would be setting off the Rent Deposits against the unsecured amount owed to Pensio by Fernwood. A copy of the April 15th Email is attached hereto as **Appendix “M”**.
52. On April 28, 2020, Paliare Roland wrote to Pensio (the “**April 28th Letter**”) to advise that: (i) Pensio had no right to offset the Rent Deposits it received on behalf of Fernwood on the basis that the Rent Deposits were held by Pensio in trust for Fernwood; and (ii) the Appointment Order precluded set-off as all rights and remedies against Fernwood’s Property are stayed and suspended. The April 28th Letter requested that Pensio remit to the Receiver the amount of the Rent Deposits, net of the March 2020 property management fee of \$3,286.94 owed by the Receiver to Pensio. A copy of the April 28th Letter is attached hereto as **Appendix “N”**.
53. As no response to the April 28th Letter was received, Paliare Roland sent an email to Mr. Keks on May 13, 2020 to request a response to the April 28th Letter and copied Friedmans. Mr. Keks responded to advise that a complete response would be provided to Paliare Roland that week.
54. On May 25, 2020 (the “**May 25th Email**”), Mr. Keks wrote to the Receiver to advise that Pensio would pay \$29,383.06 to the Receiver. The May 25th Email indicates that rent deposits of \$33,595 were held by Pensio and that in addition to the amount of the property management fees owed to it by the Receiver, Pensio was

deducting \$925 for “offset default rent” for two tenants that had not paid rent, which resulted in forfeiture of their deposits. The Receiver does not agree with Pensio that the last month’s rent claimed to be “offset default rent” totaling \$925 can be offset against Pensio’s program fees. A copy of the May 25th Email is attached hereto as Appendix “O”.

55. To date, no amount has been paid by Pensio to the Receiver in respect of the Rent Deposits. The Receiver is therefore seeking an Order requiring Pensio to pay to the Receiver \$30,318.06, which represents the Rent Deposits retained by Pensio (as per the May 25th Email) in respect of the Fernwood Owned Units less the March 2020 property management fee payable to Pensio by the Receiver.

SV LAW

56. As set out previously in this report, Mr. Zukowski advised the Receiver that the majority of Fernwood’s books and records were with RCBS. Following the Receiver’s appointment, the Receiver sought information from RCBS in respect of the 36 units in the Development sold by Fernwood to third parties (the “**Third-Party Units**”). In order to confirm that the proceeds of sale of the Third Party Units were sent to the appropriate parties, the Receiver requested copies of the agreements of purchase and sale for the Third-Party Units, the trust ledgers for same and details of where the proceeds of sale for those units were directed.
57. RCBS advised the Receiver that RCBS did not have copies of the agreements of purchase and sale; however, it had copies of certain of the closing statements of adjustments and trust ledgers, but that it did not have all of the information. The

Receiver then contacted SV Law, the law firm which represented Fernwood on the sale of the Third-Party Units, to obtain the subject documents.

58. On March 10, 2020, the Receiver wrote to SV Law seeking information and documentation in respect of the sale of the Third-Party Units and details of the security provided to Tarion. On March 18, 2020, the Receiver sent a further email to SV Law to follow up on the request sent on March 10, 2020.
59. On March 18, 2020, SV Law responded that the Fernwood file and any information the Receiver was seeking was subject to solicitor-client privilege, that SV Law was not in a position to waive that privilege, and that Fernwood was not waiving the privilege.
60. On the basis that the Receiver was unable to obtain the information it sought from RCBS and SV Law, it requested that MZG provide the information, if it was in possession of it. MZG was able to provide certain of the information sought by the Receiver; however, MZG was unable to provide the Receiver with complete information concerning the sale of all Third-Party Units.
61. As set out above, the Receiver requires the information and documentation so that it can confirm that the proceeds of sale of the Third-Party Units were sent to the appropriate parties. The Receiver has attempted to obtain such documentation from all possible sources and has been unable to obtain to date complete information relating to the sale of units to third parties or documentation in respect of Tarion.

62. On June 16, 2020, Chaitons wrote to SV Law (the “**SV Law Email**”) to advise that the Receiver required certain information that it was unable to obtain from other sources. On that same day, Chaitons wrote to Duncan Linton (the “**June 16th Email**”), with a copy of the correspondence to SV Law, to ask if Fernwood or the Zukowskis had any issue with SV Law providing the Receiver with the requested information and documents. Copies of the SV Law Email and June 16th Email are attached hereto as Appendices “**P**” and “**Q**”, **respectively**.
63. On June 23, 2020, Mr. Duncan, on behalf of Fernwood, confirmed in writing that Fernwood did not object to SV Law producing the requested documentation and information sought by the Receiver with respect to the sale of the Third Party Units. A copy of Mr. Duncan’s letter is attached hereto as Appendix “**R**”.
64. The Receiver is currently in discussions with SV Law and its independent counsel regarding the timing of the production of the requested documents, as SV Law’s files were in off-site storage and the requested documents need to be scanned.

CONDO. CORP.

Liens

65. As at the date of the Receiver’s appointment, the main accounts for water, hydro and internet were in the name of Fernwood, notwithstanding that the condominium declaration for the Development was registered in 2016, which resulted in the incorporation of the Condo. Corp., and the Condo. Corp. had retained Bayshore to be its property manager.

66. On February 14, 2020, Bayshore wrote to Fernwood, BMO and MZG to advise that it intended to register liens against the Fernwood Owned Units for non-payment of common area fees for the months of December 2019, January 2020 and February 2020, if unpaid common area expenses of \$999 per unit were not paid by February 24, 2020. Bayshore also advised that it \$1,000 per unit would be added to the Condo. Corp.'s lien, representing costs and reasonable expenses to be incurred by the Condo. Corp. in connection with the collection or attempted collection of the \$999 per unit, as well as the cost of the title search and notice of lien (the "**Lien Costs**").
67. In reviewing this matter, it appears that Fernwood had not paid any common area fees to the Condo. Corp. for a significant period of time. Based on the account statements provided by Bayshore, the Receiver understands that MZG directly paid \$1,830 per unit to the Condo. Corp. in March 2019, which appears to be the accrued balance of common area fees from April 1, 2018 to November 30, 2018.
68. On February 19, 2019, Chaitons contacted Bayshore's paralegal to seek an extension to Bayshore's February 24, 2020 deadline to pay the outstanding amount of \$999 per unit as the Receiver was in the process of obtaining an advance from MZG to fund costs of the receivership. On February 19, 2020, Bayshore responded to Chaitons to advise that the Condo. Corp.'s board of directors had provided instructions to proceed with lien registrations on February 28, 2020, if the \$999 for each of 25 of the Fernwood Owned Units was not paid.

69. On February 28, 2020, Chaitons responded to Bayshore to advise that the Receiver had sufficient funds to make payment of the \$999 for each unit in respect of common area fees for the months of December, January and February and requested confirmation that no lien had been registered against the units. Bayshore responded that a lien in the amount of \$1,999 had been registered by the Condo. Corp.'s counsel over 25 of the Fernwood Owned Units.

Following a significant number of discussions between counsel to the Receiver and counsel to the Condo. Corp., the Receiver and the Condo. Corp. have agreed to a settlement such that the Receiver is seeking Court authority to pay \$76,807 to the Condo. Corp. in full and final satisfaction of all amounts owed by Fernwood in connection with the condominium liens registered by the Condo. Corp. against Fernwood Owned Units, together with unpaid condominium fees for the months of March to June 2020. The Receiver has obtained a release from the Condo. Corp. that will become effective upon Court approval of the payment of \$76,807 to the Condo. Corp.

Utilities

70. As referred to earlier herein, the accounts for water, hydro and internet for the Development were still in the name of Fernwood as at the date of the Receiver's appointment.
71. In order to ensure no services were interrupted, the Receiver contacted the City of Barrie, Alectra Utilities and Rogers to advise of the receivership and to have accounts opened in the Receiver's name.

72. As the Receiver was receiving limited cooperation from Bayshore and Ness Law, Chaitons requested from Bayshore's paralegal the contact information for the Condo. Corp.'s board members in order that the Receiver could have a direct discussion with them regarding the Development, including the status of claimed common area deficiencies and utilities.
73. On April 8, 2020, Bayshore's paralegal advised that Chaitons' email had been forwarded to Bayshore's general manager of condominium operations (the "**General Manager**"), who would be able to answer the Receiver's questions regarding the Condo. Corp. No communication was received from the General Manager and on April 14, 2020, Chaitons followed up again with Bayshore's paralegal, who provided the General Manager's email address and phone number.
74. A call with two board members of the Condo. Corp. (the "**Board Members**"), the General Manager, Chaitons and the Receiver was arranged for April 17, 2020. During that call, the General Manager advised the Receiver that the costs for hydro, water and internet were the responsibility of each unit owner. The Receiver informed the General Manager that while the main water and hydro accounts were in the name of Fernwood, the individual units were being sub-metered by Priority Submetering Solutions ("**Priority**").
75. The Receiver discussed the utility accounts with the General Manager and the Board Members and requested their assistance to have the accounts changed over to the name of the Condo. Corp. The General Manager requested that the Receiver send to it and the Board Members copies of the agreements between

Fernwood and Rogers regarding internet services (the “**Rogers Agreement**”), and Fernwood and Priority (the “**Priority Agreement**”). The Receiver forwarded copies of the Rogers Agreement and Priority Agreement on April 17, 2020 and April 20, 2020, respectively.

76. The Receiver requested of the General Manager that it provide a copy of the common area deficiency listing submitted by the Condo. Corp. to Tarion and drawings of the Development. To date, this information has not been provided to the Receiver by the General Manager.
77. Based on calls with Priority, Alectra, the City of Barrie and Rogers, the Receiver understands that no one from Bayshore or the Condo. Corp. has contacted them. The Receiver set up calls with the various utility suppliers to apprise them of the current situation and to provide them with the General Manager’s contact information. Since the time of the Receiver’s calls with the various utility suppliers, the Receiver has followed up with them and understands the following:
 - (a) Rogers contacted Bayshore and is in the process of having the internet services agreement between Fernwood and Rogers transferred to the Condo. Corp.;
 - (b) The City of Barrie called and left a message or messages for the General Manager; however, the General Manager did not respond to the City of Barrie. As a result, the City of Barrie has unilaterally changed the main account for water into the Condo. Corp.’s name;

- (c) Alectra's position is that Bayshore needs to call their customer service number to have the account changed over to the Condo. Corp.'s name. Since Bayshore and/or the General Manager appear to be unwilling to do this, the Receiver has discussed billing for hydro with Priority and is arranging for reimbursement of charges paid by the Receiver for hydro consumed by Third-Party Units through Priority.

PROPOSED SALE PROCESS FOR THE PROPERTY

78. As noted above, Fernwood is the owner of the 26 completed units in the Development referred to herein as the Fernwood Owned Units, along with 32 incomplete residential units in Phase 3 of the Development, which are in various stages of construction.
79. The Appointment Order authorizes the Receiver to market and sell the Property. The Receiver, in consultation with MZG as the senior secured creditor, proposes the following process to market the Fernwood Owned Units and the incomplete Phase 3 residential units for sale (the "**Sale Process**"):
- (a) Within five (days) following Court approval, the Receiver will contact parties it has identified as potentially interested in purchasing the property and provide a copy of the marketing brochure attached hereto as Appendix "**S**".
- (b) Within seven (7) business days of Court approval, the Receiver will publish a notice substantially in the form attached hereto as Appendix "**T**" advertising the opportunity the opportunity in National Post and/or such

trade or other publications that the Receiver may deem appropriate or advisable, and post the opportunity on its website.

- (c) The Receiver will obtain a non-disclosure agreement from interested parties that wish to receive a confidential information memorandum and access the data room established for the opportunity.
- (d) The offer deadline for prospective purchasers will be 12:00 noon, Toronto time on July 30, 2020, subject to the Receiver, in its discretion, extending the date.

80. Additional aspects of the Sale Process include:

- (a) the Property will be marketed on an “as is where is” basis;
- (b) MZG will have the ability to submit a credit bid offer to the Receiver;
- (c) the Receiver will have the right to reject any and all offers, including the highest offer; and
- (d) any transaction will be subject to Court approval.

RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS

81. The Receiver’s interim statement of receipts and disbursements for the period February 12, 2020 to June 15, 2020 is attached hereto as **Appendix “U”**. During this period, total receipts were \$661,409, while total disbursements were \$68,765, resulting in a cash surplus of \$592,644.

82. Included in the receipts is \$545,000 representing the Receiver's borrowings of \$575,000 from MZG net of an interest reserve of \$30,000 held back by MZG to service interest costs during the term of the borrowing. In addition, the Receiver collected \$111,408 of rent from unit and parking tenants.
83. Included in disbursements is \$21,020 paid for insurance premiums, \$20,392 paid to Paliare Roland in respect of legal fees, \$8,346 paid in respect of HST and PST and \$6,228 for repairs and maintenance.

FEES AND DISBURSEMENTS OF THE RECEIVER AND COUNSEL

84. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel shall pass their accounts before the Court.
85. The fees and disbursements of the Receiver for the period February 6, 2020 to May 31, 2020 were \$98,704.50, plus disbursements of \$221.61, plus HST of \$12,860.39, for a total of \$111,786.50. The time spent by the Receiver is more particularly described in the Affidavit of Arif Dhanani sworn June 30, 2020, which is attached hereto and marked as **Appendix "V"** and contains a copy of the invoices that set out the services provided during this period.
86. The fees of the Receiver's independent counsel, Paliare Roland, for the period March 3, 2020 to May 31, 2020 were \$20,615.50, plus disbursements of 2,221.60 plus HST of \$2,960.01, for a total of \$25,797.11. The time spent by Paliare Roland

is more particularly described in the Affidavit of Sarita Sanasie, sworn June 30, 2020, which is attached hereto as **Appendix “W”** and contains a copy of the invoices that set out the services provided during this period.

87. The Receiver is of the view that the fees and disbursements charged by Paliare Roland are fair and reasonable.

REQUESTS OF THE COURT

88. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 6(c) above.

All of which is respectfully submitted to this Court as of this 30th day of June, 2020.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
Fernwood Developments (Ontario) Corporation
and not in its personal capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

APPENDIX C

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

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

THE HONOURABLE MADAM

)

TUESDAY, THE 7th

JUSTICE DIETRICH

)

DAY OF JULY, 2020

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

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

ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of the Respondent, was heard this day virtually via Zoom videoconference as a result of the COVID-19 crisis.

ON READING the Notice of Motion and the First Report of the Receiver dated June 30, 2020 (the “**First Report**”) and the appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel in attendance on the videoconference,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Motion Record is hereby abridged and validated, and the manner of service of the Notice of Motion and Motion Record is hereby validated, so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the First Report, and the conduct and activities of the Receiver described therein, be and are hereby is approved.
3. **THIS COURT ORDERS** that the Receiver is hereby authorized to pay the sum of \$76,807 to Simcoe Standard Condominium Corporation No. 420 in connection with the condominium liens and outstanding common expenses owed for the Fernwood Owned Units (as defined in the First Report) since December 1, 2019.
4. **THIS COURT ORDERS** that the sale process described in the First Report (the "**Sale Process**"), be and is hereby approved. The Receiver is authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.
5. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from February 12, 2020 to June 15, 2020 attached as Appendix "U" to the First Report be and is hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its independent counsel, Paliare Roland Rothstein Rosenberg LLP, as described in the First Report, the Fee Affidavit of Arif Dhanani sworn June 30, 2020 attached as Appendix "V" thereto and the

Fee Affidavit of Sarita Sanasie sworn June 30, 2020 attached as Appendix "W" thereto, be and is hereby approved.

7. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.



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

PROCEEDING COMMENCED AT
TORONTO

ORDER

CHAITONS LLP

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

Sam Rappos (LSO No. 51399S)

Tel: (416) 218-1137

Fax: (416) 218-1837

E-mail: samr@chaitons.com

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

35th Floor, 155 Wellington St. W.
Toronto, ON M5V 3H1

Jeff Larry (LSO No. 44608D)

Tel: (416) 646-4330

Fax: (416) 646-4301

Email: jeff.larry@paliaroland.com

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

APPENDIX D

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

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

THE HONOURABLE MADAM
JUSTICE DIETRICH

)
)
)

TUESDAY, THE 7th
DAY OF JULY, 2020

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

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

ORDER

THIS MOTION, made by the Applicant, for, *inter alia*, an order authorizing and directing RSM Canada Limited., in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertaking of the Respondent, to file an assignment in bankruptcy in the name of and on behalf of the Respondent, was heard this day virtually via Zoom videoconference as a result of the COVID-19 crisis.

ON READING the Notice of Motion and the First Report of the Receiver dated June 30, 2020 and the appendices thereto, and on hearing the submissions of counsel for the Applicant and such other counsel in attendance on the videoconference,

1. **THIS COURT ORDERS** that the time for service of the Applicant's Notice of Motion is hereby abridged and validated, and the manner of service of the Notice of Motion is hereby validated, so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Receiver is hereby empowered, authorized and directed to file an assignment in bankruptcy in the name of and on behalf of the Respondent. The Receiver is hereby authorized and directed to take such steps and execute such documents as may be necessary or desirable to complete the filing of the assignment in bankruptcy.
3. **THIS COURT ORDERS** that the Receiver is authorized and empowered to nominate RSM Canada Limited to act as trustee in bankruptcy of the Respondent.
4. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

A handwritten signature in blue ink, reading "Dietrich J.", is written over a horizontal line.

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

CHAITONS LLP

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

Sam Rappos (LSO No. 51399S)

Tel: (416) 218-1137

Fax: (416) 218-1837

E-mail: samr@chaitons.com

Lawyers for MarshallZehr Group Inc.

APPENDIX E



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of: Ontario
Division No.: 03 - Barrie
Court No.: 31-2661061
Estate No.: 31-2661061

In the Matter of the Bankruptcy of:
Fernwood Developments (Ontario) Corporation
Debtor
RSM Canada Limited
Licensed Insolvency Trustee
Ordinary Administration

Date and time of bankruptcy:	July 29, 2020, 08:39	Security:	\$0.00
Date of trustee appointment:	July 29, 2020		
Meeting of creditors:	August 17, 2020, 14:00 MEETING TO BE HELD VIA TELEPHONE 1-877-309-3457 or 1-416-981-9878 Access code: 129 658 1867, Ontario Canada,		
Chair:	Trustee		

CERTIFICATE OF APPOINTMENT - Section 49 of the Act; Rule 85

-- AMENDED --

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforementioned debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforementioned trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy; and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: July 29, 2020, 13:05

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

APPENDIX F

FULL AND FINAL RELEASE

IN CONSIDERATION of the payment of the sum of \$76,807.00 and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Simcoe Standard Condominium Corporation No. 420 (“**SSCC 420**”) on behalf of itself and directors, officers, successors, and assigns (collectively the “**Releasors**”) hereby irrevocably release, remise, and forever discharge Fernwood Developments (Ontario) Corporation (“**Fernwood**”), RSM Canada Limited, and their respective directors, officers, successors and assigns, (collectively the “**Releasees**”), from any and all demands, claims, actions, causes of action, liens, counterclaims, suits, debts, sums of money, interest, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance, expenses, executions, encumbrances, and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution and indemnity, which the Releasors may be entitled to assert, whether known or unknown, mature or unmatured, direct, indirect, or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the date hereof in connection with:

- a) any and all amounts owed by Fernwood to SSCC 420 in connection with common expense fees and liens registered which secure payment of common expense fees, interest and costs for the months of December 2019 through to and including June 2020 and a \$225 per unit special assessment as of January 2020 payable by Fernwood with respect to the twenty-five (25) residential units owned by Fernwood in the condominium as set out in the Declaration registered by Fernwood as declarant on October 24, 2016 and listed in **Schedule “A”** attached hereto; and
- b) any and all amounts owing by Fernwood to SSCC 420 in connection with common expense fees, interest and costs for Unit 79, Level 1, 14-246 Penetanguishene Road for the months of March 2020 through to and including June 2020 payable by Fernwood with respect to this unit owned by Fernwood in the condominium as set out in the Declaration registered by Fernwood as declarant on October 24, 2016.

The amounts referred to above in (a) and (b) are collectively referred to as the “**Released Claims**”. For greater certainty, the Released Claims only include any and all amounts owed by Fernwood to SSCC 420 for common expense fees, interest and costs in connection with the twenty-six (26) condominium units referenced above for the time periods specified above but do not include any amounts owing by Fernwood to SSCC 420 for common expense fees, interest and costs prior to December 2019 for the 25 units listed in Schedule A or prior to March 2020 for Unit 79, Level 1, 14-246 Penetanguishene Road. RSM Canada Limited, in its capacity as Court-appointed receiver of the property, assets and undertakings of Fernwood, acknowledges that the Releasors reserve all rights, demands, claims, actions, causes of action, liens, counterclaims, suits, debts, sums of money, interest, costs, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance, expenses, executions, encumbrances, and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution and indemnity for any amounts owing by Fernwood to SSCC 420 not covered by the Released Claims. All Released Claims

shall be fully, finally, irrevocably, and forever waived, discharged, released, cancelled, and barred as against the Releasees, all to the fullest extent permitted by applicable law.

IT IS FURTHER AGREED AND UNDERSTOOD that for the consideration aforesaid, the Releasors undertake and agree not to take or continue any steps or initiate or continue any proceedings, commence or continue any actions or make or continue any claim against any person, firm, corporation or other entity which may seek, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act*, and/or under the *Rules of Civil Procedure*, or may make any claim over or against the Releasees relating to any of the Released Claims.

AND IT IS FURTHER AGREED AND UNDERSTOOD that this Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasors with respect to the Released Claims. This Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by the Releasors in any subsequent action that persons in the subsequent action were not privy to, or parties to, this Release.

AND FOR THE SAID CONSIDERATION the Releasors represent and warrant that they have not assigned to any person, firm or corporation, or any other entity, any of the Released Claims released above and with respect to which they agree not to make any claims or take any proceedings and that they have the full right and authority to release the matters released herein.

AND FOR THE SAID CONSIDERATION the Releasors hereby acknowledge, declare and agree that they understand the terms of this Release and voluntarily accept the consideration referred to above for the purpose of making full and final compromise, adjustment and settlement of all Released Claims, and represent and warrant that they have not been induced to enter into this Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition, express or implied, or collateral agreement affecting the said compromise, adjustment and settlement.

AND IT IS UNDERSTOOD AND AGREED that the Releasees do not admit any liability or obligation of any kind whatsoever to the Releasors and such liability or obligation is specifically denied.

THE RELEASORS acknowledge that they have carefully read this Release, have received the advice of a lawyer as to the nature and effect of this Release, understand all of the terms in this Release and have executed this Release voluntarily and with knowledge of the consequences hereof.

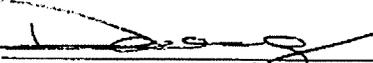
- 3 -

THIS RELEASE is to be governed by and interpreted in accordance with the laws of Ontario and the Releasors submit to the exclusive jurisdiction of the courts of Ontario in connection with any dispute or interpretation regarding this Release.

THIS RELEASE may be executed in any number of counterparts, and all such counterparts shall, for all purposes, constitute one agreement binding on the Releasors, provided each party has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that all Releasors are not signatory to the same counterpart. Delivery of an executed counterpart of this Release by PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

IN WITNESS WHEREOF the undersigned have executed this Release as of the 3 day of July, 2020.

**SIMCOE STANDARD CONDOMINIUM
CORPORATION NO. 420**

Per: 
Name: Deanna Fudge
Title: President

I have authority to bind the Corporation

**SIMCOE STANDARD CONDOMINIUM
CORPORATION NO. 420**

Per: 
Name: B WILLIAMS
Title: DIRECTOR

I have authority to bind the Corporation

SCHEDULE "A"

CONDOMINIUM LIENS

Unit 1	Level 1	8 - 244 Penetanguishene Road
Unit 10	Level 1	15 - 244 Penetanguishene Rad
Unit 11	Level 1	14-244 Penetanguishne Road
Unit 14	Level 1	11-244 Penetanguishine Road
Unit 22	Level 1	3-242 Penetanguishine Road
Unit 25	Level 1	16-242 Penetanguishne Road
Unit 30	Level 1	11 - 242 Penetanguishne Road
Unit 31	Level 1	10-242 Penetanguishne Road
Unit 66	Level 1	1-246 Penetanguishne Road
Unit 68	Level 1	3 - 246 Penetanguishe Road
Unit 69	Level 1	4- 246 Penetanguishne Road
Unit 71	Level 1	6-246 Penetanguishne Road
Unit 72	Level 1	7-246 Penetanguishne Road
Unit 73	Level 1	8- 246 Penetanguishne Road
Unit 77	Level 1	12-246 Penetanguishne Road
Unit 78	Level 1	13-246 Penetanguishne Road
Unit 81	Level 1	2-252 Penetanguishine Road
Unit 87	Level 1	8-252 Penetanguishne Road
Unit 88	Level 1	9-252 Penetanguishine Road
Unit 89	Level 1	10-252 Penetanguishine Road
Unit 90	Level 1	11-252 Penetanguishne Road
Unit 91	Level 1	12-252 Penetanguishine Road
Unit 92	Level 1	13- 252 Penetanguishine Road
Unit 93	Level 1	14-252 Penetanguishine Road
Unit 94	Level 1	15-252 Penetanguishene Road

APPENDIX G

Bayshore

PROPERTY MANAGEMENT INC.

August 21, 2020

To all owners of SSCC 420

RE: LEASING OF UNITS

As an owner choosing to rent your condominium you are obligated to Provide the following information Pursuant to section 83 (1) of the Condominium Act and must comply with the Declaration and Rules of the Corporation as set out below. You must also provide the Corporation with your off site address and phone number so that you can receive all communications regarding your unit in a timely manner.

Notification by owner

83 (1) The owner of a unit who leases the unit or renews a lease of the unit shall, **within 10 days of entering into the lease or the renewal**, as the case may be,

- (a) notify the corporation that the unit is leased;
- (b) provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and
- c) provide the lessee with a copy of the declaration, by-laws and rules of the corporation. 1998, c. 19, s. 83 (1); 2015, c. 28, Sched. 1, s. 75 (1).

Termination of lease

83 (2) If a lease of a unit is terminated and not renewed, the owner of the unit shall notify the corporation in writing within 10 days of the termination. 1998, c. 19, s. 83 (2); 2015, c. 28, Sched. 1, s. 75 (2).

Please complete the attached owner and tenant information form and return it with either a copy of the lease or completed attached form (summary of lease or renewal) by September 5th, 2020. If the information is not provided in accordance with obligations under the Condo Act, the matter will be referred to a lawyer and costs of the lawyer will be charged back to the unit owner.

Please email the completed forms to jharris@bpmgmt.ca or mail to P.O.Box 606 Barrie, ON L4M 4V1.

Thank you,
On behalf of the Board of Directors


Joanna Tomaszewski, RCM
General Manager of Condominium Operations



P.O. Box 606, 11 Ferris Lane, Suite 101, Barrie, ON L4M 4V1 Bus: (705)722-3700 Toll Free: (888)919-0996 Fax: (705)722-6242
www.bayshoreproperty.ca

SIMCOE STANDARD CONDOMINIUM CORPORATION #420
242 – 252 PENETANGUISHENE ROAD
BARRIE, ON

OWNER / TENANT INFORMATION

UNIT _____ AT _____ PENETANGUISHENE RD., BARRIE

OWNER NAMES: _____

TELEPHONE #: _____

EMAIL ADDRESS: _____

MAILING ADDRESS _____

TENANTS' NAMES AND CONTACT:

(Please list all that will be residing in the unit)

NAME: _____ email _____ phone # _____

TENANT VEHICLE INFORMATION:

Make _____ colour _____ license plate _____

SUMMARY OF LEASE OR RENEWAL
(clause 83 (1) (B) of the Condominium Act, 1998)

Condominium Act, 1998

TO: (name of condominium corporation)

1. This is to notify you that:

[Strike out whichever is not applicable:

a written or oral (strike out whichever is not applicable: lease, sublease, assignment of lease)

OR

a renewal of a written or oral (strike out whichever is not applicable: lease, sublease, assignment of lease) has been entered into for:

[For all condominium corporations except common elements condominium corporations:

Unit(s), Level(s) (include any parking or storage units that have been leased)]

[In the case of a common elements condominium corporation:

the common interest in the condominium corporation, being the interest attached to (provide brief description of the parcel of land to which the common interest in the Condominium Corporation is attached)]

on the following terms:

Name of lessee(s) (or sublessee(s)):

Telephone number:

Fax number, if any:

Commencement date:

Termination date:

Option(s) to renew:

(set out details)

Rental payments:

(set out amount and when due)

Other information:

(at the option of the owner)

2. I (We) have provided the (strike out whichever is not applicable: lessee(s), sublessee(s)) with a copy of the declaration, by-laws and rules of the condominium corporation.

3. I (We) acknowledge that, as required by subsection 83 (2) of the *Condominium Act, 1998*, I (we) will advise you in writing if the (strike out whichever is not applicable: lease, sublease, assignment of lease) is terminated.

Dated this day of,

.....
(signature of owner(s))

.....
(print name of owner(s))

(In the case of a corporation, affix corporate seal or add a statement that the persons signing have the authority to bind the corporation.)

.....
(address)

.....
(telephone number)

.....
(fax number, if any)

APPENDIX H

Dhanani, Arif

From: Sonja Hodis <sonja@hodislaw.com>
Sent: Tuesday, October 13, 2020 8:08 PM
To: Dhanani, Arif; Stacie@subhkin.com; recharge@subhkin.com
Subject: Arrears of Common Expense Fees - 26 Rental Units - Pentanguishene Road - SSCC No. 420

Attachments: letter to A Defrain 12-246 Oct 13 20.pdf; ATT00001.htm; letter to A Manners 11-252 Oct 13 20.pdf; ATT00002.htm; letter to A Oad 2-252 Oct 13 20.pdf; ATT00003.htm; letter to a Snyder 8-252 Oct 13 20.pdf; ATT00004.htm; letter to B McKenzie 4-246 Oct 13 20.pdf; ATT00005.htm; letter to C Crouse 12-252 Oct 13 20.pdf; ATT00006.htm; letter to C Giesler 12-246 Oct 13 20.pdf; ATT00007.htm; letter to C Ryfa 3-246 Oct 13 20.pdf; ATT00008.htm; letter to D Delfosse 6-246 oct 13 20.pdf; ATT00009.htm; letter to D Loder 11-244 Oct 13 20.pdf; ATT00010.htm; letter to D Pearce 14-246 Oct 13 20.pdf; ATT00011.htm; letter to D Thomson 15-244 Oct 13 20.pdf; ATT00012.htm; letter to d uzun 16-242 Oct 13 20.pdf; ATT00013.htm; letter to E Kahyaoglu 16-242 Oct 20 20.pdf; ATT00014.htm; letter to E Stewart 3-246 oct 13 20.pdf; ATT00015.htm; letter to E Wylie 8-244 Oct 13 20.pdf; ATT00016.htm; letter to I Campbell 8-244 Oct 13 20.pdf; ATT00017.htm; letter to J Claeys 10-242 Oct 13 20.pdf; ATT00018.htm; letter to J Domander 10-252 Oct 13 20.pdf; ATT00019.htm; letter to J Horne 8-246 Oct 13 20.pdf; ATT00020.htm; letter to J Ramsingh 8-252 Oct 13 20.pdf; ATT00021.htm; letter to J Silva 3-242 Oct 13 20.pdf; ATT00022.htm; letter to J Singh 11 -242 Oct 13 20.pdf; ATT00023.htm; letter to J Steeper 8-246 Oct 13 20.pdf; ATT00024.htm; letter to J Wallace 13-252 Oct 13 20.pdf; ATT00025.htm; letter to J Warme 14-246 Oct 13 20.pdf; ATT00026.htm; letter to jaspreet singh 11-242 oct 13 20.pdf; ATT00027.htm; letter to K Harris 14-244 Oct 13 20.pdf; ATT00028.htm; letter to K Hawkins 12-246 Oct 13 20.pdf; ATT00029.htm; letter to K Lauren 14-246 Oct 13 20.pdf; ATT00030.htm; letter to K McEdwards 10-252 Oct 13 20.pdf; ATT00031.htm; letter to K Savindi 7-246 Oct 13 20.pdf; ATT00032.htm; letter to K Wells 14-244 oct 13 20.pdf; ATT00033.htm; letter to L Perchal 14-244 Oct 13 20.pdf; ATT00034.htm; letter to L Singh 11-242 Oct 13 20.pdf; ATT00035.htm; letter to M Donohue 11-244 Oct 13 20.pdf; ATT00036.htm; letter to M Liesemer 13-246 Oct 13 20.pdf; ATT00037.htm; letter to M Mensen 13-252 oct 13 20.pdf; ATT00038.htm; letter to M Omosule 3-246 Oct 13 20.pdf; ATT00039.htm; letter to M Patricia 13-252 Oct 13 20.pdf; ATT00040.htm; letter to M Singh 11-242 Oct 13 20.pdf; ATT00041.htm; letter to N Blair 8-244 Oct 13 20.pdf; ATT00042.htm; letter to N Reynolds 12-246 Oct 13 20.pdf; ATT00043.htm; letter to O Spratt 15-244 Oct 13 20.pdf; ATT00044.htm; letter to P Hillman 3-242 Oct 13 20.pdf; ATT00045.htm; letter to P Parami 7-246 Oct 13 20.pdf; ATT00046.htm; letter to P Robers 12-252 Oct 13 20.pdf; ATT00047.htm; letter to R Lacroix 16-242 oct 13 20.pdf; ATT00048.htm; letter to R Lacroix Oct 13 20.pdf; ATT00049.htm; letter to R Lepine 6-246 Oct 13 20.pdf; ATT00050.htm; letter to S Abbott 4-246 Oct 13 20.pdf; ATT00051.htm; letter to S Ataikiru 7-246 Oct 13 20.pdf; ATT00052.htm; letter to S Bearinger 11-252 oct 13 20.pdf; ATT00053.htm; letter to S Lewis 1-246 Oct 13 20.pdf; ATT00054.htm; letter to S Ngoie 7-246 Oct 13 20.pdf; ATT00055.htm; letter to S Rose 14-246 Oct 13 20.pdf; ATT00056.htm; letter to S Smith 10-242 Oct 13 20.pdf; ATT00057.htm; letter to S White 3-242 oct 13 20.pdf; ATT00058.htm; letter to T Gallagher 11-252 Oct 13 20.pdf; ATT00059.htm; letter to T Ryfa 13-246 Oct 13 20.pdf; ATT00060.htm; letter to T Schuaefier 10-252 Oct 13 20.pdf; ATT00061.htm; letter to V Curtis 14-244 oct 13 20.pdf; ATT00062.htm

I am the lawyer for SSCC No. 420.

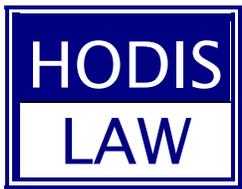
We have notified your tenants at the 26 units in SSCC No. 420 that the owner is in arrears and have directed them pursuant to s. 87 of the Condominium Act to forward their rents to SSCC No. 420 c/o Bayshore Property Management until the arrears have been paid.

The arrears are from December 2018 to November 2019 for 26 units except for unit 14-246 which has arrears from December 2018 to February 2020.

A copy of the letters sent to your tenants is attached to this email.

To date, the arrears total \$76,815.00 plus interest and costs. These arrears were not covered by the settlement and release from earlier this year. The Condominium Corporation specifically reserved the right to collect these arrears. Once we have received payment for these arrears, interest and costs we will notify your tenants to stop sending their rental payments to SSCC No. 420 and to commence sending payment to you once again. If you would like to make arrangements to pay the total amount owing in full in one lump sum payment, please contact my office to confirm the final payout sum.

We will provide an accounting of all monies received.



SONJA HODIS
BARRISTER, SOLICITOR & NOTARY

62 Camelot Square
Barrie, Ontario, L4M 0C2
T: (705) 737-4403
F: (705) 300-2599
sonja@hodislaw.com

October 13, 2020

VIA MAIL and EMAIL

██████████
██████ 246 Pentanguishene Road
Barrie, Ontario
L4M 7C2

████████████████████

RE: Payment of Rent to SSCC No. 420 (Simcoe Standard Condominium Corporation No. 420)

I am the lawyer for SSCC No. 420. We have been advised by the owner that you are renting a unit at the above condominium.

The owner of the unit is in arrears of common expenses.

Pursuant to section 87 of the Condominium Act, you are hereby directed to forward your entire rental payment starting immediately to SSCC No. 420 c/o Bayshore Property Management at 11 Ferris Lane, Unit 1, Barrie, Ontario L4M 5M6. You can **contact Jane Harris** at Bayshore Property Management - **705 722-3700 ext. 262 or by email at jharris@bpmgmt.ca** to make arrangements for delivery of payments. Full Rental payments should be forwarded until the amount of arrears has been paid in full. I or Bayshore Property Management will advise you when the owner is no longer in arrears and you can stop forwarding your rental payments.

RSM Canada Limited, who is the Receiver for the owner will also be notified that your rental payments are being directed to SSCC No. 420 pursuant to section 87 of the Condominium Act. Stacie James, from Subhkin Management who manages the rentals on behalf of RSM Canada Limited, will also be notified.

Please be advised that you are required to forward your rental payments pursuant to the law and you are protected by s. 87(6) which states that the payments made to the condominium corporation shall constitute payments towards your rent under the lease and you will not be considered to be in default of your obligations under your lease if you make payments to the condominium corporation.

Please also be advised that if you fail to send your rental payments to SSCC No. 420 as required by s. 87 of the Condominium Act, SSCC No. 420 will have no option but to commence court proceedings for your breach of the Condominium Act.

Section 87 states (I have bolded sections referred to above):

87 (1) If an owner who has leased a unit defaults in the obligation to contribute to the common expenses payable for the owner's unit, the corporation may, by written notice to the lessee, require the lessee to pay to the corporation the lesser of the amount of the default and the amount of the rent due under the lease. 1998, c. 19, s. 87 (1); 2015, c. 28, Sched. 1, s. 80 (1).

Service on lessee

(2) The corporation shall give the notice to the lessee by personal service or by sending it by prepaid mail addressed to the lessee at the address of the unit. 1998, c. 19, s. 87 (2).

Notice to owner

(3) If the corporation gives a notice to a lessee, it shall give a copy of the notice to the owner of the unit that the lessee has leased. 1998, c. 19, s. 87 (3).

(4) Repealed: 2015, c. 28, Sched. 1, s. 80 (2).

Rent paid to corporation

(5) Upon receiving a notice under subsection (1), the lessee shall make the required payment to the corporation even if an encumbrancer of the unit has acquired the right of the lessor to receive rent under the lease. 1998, c. 19, s. 87 (5).

No default in lease

(6) The payment to the corporation shall constitute payment towards rent under the lease and the lessee shall not by reason only of the payment to the corporation be considered to be in default of an obligation in the lease. 1998, c. 19, s. 87 (6).

Should you have any questions, please do not hesitate to contact me and we thank you in advance for your corporation

Yours truly,



Sonja Hodis

cc: Unit Owner c/o Arif Dhanani, VP, RSM Canada Ltd., Receiver for the Unit owner via email arif.dhanani@rsmcanada.com and mail to 11 King Street West, Suite 700, Box 27, Toronto, Ontario M5H 4C7

cc: Stacie James, Subhkin Management, Property Manager for Rentals for Receiver via email only Stacie@subhkin.com and recharge@subhkin.com

APPENDIX I

Jeffrey Larry

T 416.646.4330 Asst 416.646.7404

F 416.646.4301

E jeff.larry@paliareroland.com

www.paliareroland.com

File 97267

October 15, 2020

VIA EMAIL

Sonja Hodis
Barrister, Solicitor & Notary
62 Camelot Square
Barrie, Ontario L4M 0C2

Re: *Fernwood Developments (Ontario) Corporation ("Fernwood") and Simcoe Standard Condominium Corporation No. 420 ("SSCC No. 420")*

Dear Ms. Hodis,

We are the lawyers for RSM Canada Limited ("**RSM**") in its capacity as Court-appointed receiver (the "**Receiver**") of the property, assets and undertakings of Fernwood. RSM is also the Trustee in Bankruptcy of Fernwood.

I enclose a copy of the Court Order dated February 12, 2020 appointing the Receiver (the "**Appointment Order**"). I understand that this order was previously provided to you on June 5, 2020 and to the property manager for SSCC No. 420 on February 14, 2020.

The Receiver has forwarded to us copies of correspondence dated October 13, 2020 that you sent on behalf of SSCC No. 420 to the tenants (collectively, the "**Tenants**") of the 26 units owned by Fernwood (collectively, the "**Fernwood Units**") demanding that the Tenants pay rent directly to SSCC No. 420 instead of the Receiver or its property manager, in reliance on section 87 of the *Condominium Act, 1988* (the "**Act**").

The rents owed by Tenants of the Fernwood Units is property of Fernwood (the "**Property**") that is subject to the registered security of MarshallZehr Group Inc., which was registered against title to the Fernwood Units prior to the time that Fernwood fell into arrears for common expenses for the Fernwood Units.

Pursuant to paragraph 3 of the Appointment Order, the Receiver has been exclusively authorized and empowered by the Court to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property. There is no dispute that this includes rent owed by Tenants.

Chris G. Paliare
Ian J. Roland
Ken Rosenberg
Linda R. Rothstein
Richard P. Stephenson
Nick Coleman
Donald K. Eady
Gordon D. Capern
Lily I. Harmer
Andrew Lokan
John Monger
Odette Soriano
Andrew C. Lewis
Megan E. Shortreed
Massimo Starnino
Karen Jones
Robert A. Centa
Nini Jones
Jeffrey Larry
Kristian Borg-Olivier
Emily Lawrence
Tina H. Lie
Jean-Claude Killey
Jodi Martin
Michael Fenrick
Ren Bucholz
Jessica Latimer
Lindsay Scott
Alysha Shore
Denise Cooney
Paul J. Davis
Danielle Glatt
Lauren Pearce
Elizabeth Rathbone
Daniel Rosenbluth
Glynnis Hawe
Emily Home
Hailey Bruckner
Charlotté Calon
Catherine Fan
Douglas Montgomery
Shawna Leclair
Jesse Wright

COUNSEL

Stephen Goudge, Q.C.

HONORARY COUNSEL

Ian Scott, Q.C., O.C.
(1934 - 2006)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 WELLINGTON STREET WEST 35TH FLOOR TORONTO ONTARIO M5V 3H1 T 416.646.4300

Pursuant to paragraph 10 of the Appointment Order, all rights and remedies against Fernwood and the Property are stayed and suspended except with the written consent of the Receiver or leave of the Court.

SSCC No. 420 never sought the Receiver's consent of the Receiver or leave of the Court to enforce upon the Property prior to you sending your correspondence. The steps taken by SSCC No. 420 are in direct violation of both the terms of the Appointment Order and Section 69.3 of the *Bankruptcy and Insolvency Act* and have created unnecessary disruption, uncertainty, and panic amongst the Tenants.

The Receiver is of the view that, at its highest, SSCC No. 420 is an unsecured creditor of Fernwood for the unpaid common expenses. As such and in any event, the steps taken by SSCC No. 420 are an improper attempt to upend the existing priorities with respect to the Property, contrary to applicable bankruptcy and insolvency laws.

As a result, on behalf of the Receiver, we hereby require SSCC No. 420 to take the follow steps by Friday October 16, 2020 at 3 p.m.: (i) withdraw its demand for payment to the Tenants; (ii) provide us with evidence of such withdrawal; and (iii) confirm that any and all rent collected from tenants of the Fernwood Units will be forwarded immediately to the Receiver and that any future rent paid to SSCC No 420 will also be forwarded immediately to the Receiver.

If these steps are not taken, the Receiver will have no choice but to immediately schedule a hearing before the Court and seek costs against SSCC No. 420.

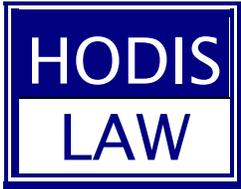
Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Jeffrey Larry
JL:JL

c: B. Tannenbaum/A. Dhanani
S. Rappos

APPENDIX J



SONJA HODIS
BARRISTER, SOLICITOR & NOTARY

62 Camelot Square
Barrie, Ontario, L4M 0C2
T: (705) 737-4403
F: (705) 300-2599
sonja@hodislaw.com

October 15, 2020

Jeffrey Larry
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street W. 35th floor
Toronto, Ontario
MN5V 3H1

VIA EMAIL ONLY
Jeff.Larry@paliareroland.com

RE: Payment of Rent to SSCC No. 420 (Simcoe Standard Condominium Corporation No. 420)

Dear Counsel:

Thank you for your letter dated October 15, 2020.

In response to your letter, I point out two things:

1, Section 87 specifically allows a condominium to approach tenants of a leased unit and demand that they redirect their rent to the condominium when there are arrears. Section 87 also specifically states:

Rent paid to corporation

(5) Upon receiving a notice under subsection (1), the lessee shall make the required payment to the corporation even if an encumbrancer of the unit has acquired the right of the lessor to receive rent under the lease. 1998, c. 19, s. 87 (5). (emphasis mine)

2. *Metropolitan Toronto Condominium Corp No. 11 75 v. Irving A Burton Ltd.* (1999) 25 R.P.R. (3d) 268 clearly sets out the ability of the condo corporation to avail itself of this statutory remedy and has confirmed that it takes priority over other encumbrancers with respect to rental payments and applies to arrears not covered by a lien. In this case, the condominium was successful in the collection of rents to be applied to arrears pursuant to s. 49 (now s. 87) of the Condominium Act. The Court stated:

17 It is my view that the other creditors, including the Lien Trustee and the Toronto-Dominion Bank who has an assignment of rents, are only entitled to claim those monies that are paid to, and come into the hands of, the landlord as rents. In

effect, what section 49 does is to permit the condominium corporation to direct a tenant to pay a portion of the rent to it in advance of any rent being paid to the landlord. The tenant then has a right of set-off for the amount so paid against the tenant's obligation to pay rent under the lease such that the tenant only pays the remaining balance to the landlord. Under this statutory scheme, therefore, it is only the remaining balance to which the claims of the Lien Trustee and the Toronto-Dominion Bank can attach. It is for this reason, that is that the full amount of the rent is not being paid to the landlord, that the section needed to provide that compliance with this section would not be a ground of default under the lease. In other words, because section 49 diverts the payment of these funds before they come into the hands of the landlord, whether notionally or in reality, it was necessary to deem that diversion not to be a default to prevent the lessee from being in breach of the lease simply by obeying the provisions of the statutory notice.

23 I therefore conclude that the Applicant, having given the appropriate notice under section 49 of the Condominium Act, is entitled to payment from the rents received by BridgeStreet of all arrears of common expenses for the Dynasty units in priority to the claims of the Lien Trustee. If this results in a re-ordering of priorities for other creditors, I can only conclude that must have been the intention of the Legislature when it passed the legislation with this section worded as it is.

Unless you can provide me with caselaw and statutory authority to the contrary there is nothing that stops the condominium from proceeding with the collection of rents pursuant to s. 87. The tenants have been notified and your client has received notice as required by the Condominium Act.

Once the arrears, costs and interest are paid, the condominium corporation will stop collecting rents and your client can resume collecting the rents. We will provide a full accounting and if any amount of rent collected exceeds the amount owing, we will remit the excess to your client.

Yours truly,



Sonja Hodis

cc: client

APPENDIX K

Jeffrey Larry

T 416.646.4330 Asst 416.646.7404

F 416.646.4301

E jeff.larry@paliareroland.com

www.paliareroland.com

File 97267

October 16, 2020

VIA EMAIL

Sonja Hodis
Barrister, Solicitor & Notary
62 Camelot Square
Barrie, Ontario L4M 0C2

Re: *Fernwood Developments (Ontario) Corporation ("Fernwood") and Simcoe Standard Condominium Corporation No. 420 ("SSCC No. 420")*

Dear Ms. Hodis,

I refer to your October 15, 2020.

The case which you reference (*Metropolitan Toronto Condominium Corp. No 1175 v. Irving A. Burton Ltd ("Burton")*) is completely distinguishable from the present situation and does not provide any authority for relying on Section 87 of the *Condominium Act* in these circumstances.

First, the receiver in *Burton* was appointed under a provincial statute. In our case, RSM's appointments as receiver and, subsequently, as Trustee in Bankruptcy, were made pursuant to the federal *Bankruptcy and Insolvency Act* (the "*BIA*"). The *BIA* renders void any provisions of provincial statutes which conflict with the bankruptcy regime. Here, Section 87 of the *Condominium Act* subverts the *BIA*'s priority and distribution scheme by taking value out of the estate which would otherwise be available for distribution to creditors. Therefore, the provision is not enforceable.

Second, there is no indication in *Burton* that there was any stay of enforcement proceedings. By contrast, SSCC No. 420 was (and remains) expressly precluded from taking any enforcement steps by the clear terms of the initial receivership order (the "Appointment Order") and under section 69.3 of the *BIA* (which, again, is paramount to the *Condominium Act*).

We trust this satisfies your request that we provide authority for our position that SSCC No. 420 is not entitled to rely on Section 87 of the *Condominium Act* in the present circumstances.

Chris G. Paliare
Ian J. Roland
Ken Rosenberg
Linda R. Rothstein
Richard P. Stephenson
Nick Coleman
Donald K. Eady
Gordon D. Capern
Lily I. Harmer
Andrew Lokan
John Monger
Odette Soriano
Andrew C. Lewis
Megan E. Shortreed
Massimo Starnino
Karen Jones
Robert A. Centa
Nini Jones
Jeffrey Larry
Kristian Borg-Olivier
Emily Lawrence
Tina H. Lie
Jean-Claude Killey
Jodi Martin
Michael Fenrick
Ren Bucholz
Jessica Latimer
Lindsay Scott
Alysha Shore
Denise Cooney
Paul J. Davis
Danielle Glatt
Lauren Pearce
Elizabeth Rathbone
Daniel Rosenbluth
Glynnis Hawe
Emily Home
Hailey Bruckner
Charlotté Calon
Catherine Fan
Douglas Montgomery
Shawna Leclair
Jesse Wright

COUNSEL

Stephen Goudge, Q.C.

HONORARY COUNSEL

Ian Scott, Q.C., O.C.
(1934 - 2006)

We also repeat our request that you provide the confirmation requested in my October 15, 2020 letter by 3 pm today. If this confirmation is not provided, we will immediately canvass the court's earliest availability for a motion.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

A handwritten signature in blue ink, appearing to read 'Jeffrey Larry', is positioned above the typed name.

Jeffrey Larry
JL:JL

c: B. Tannenbaum/A. Dhanani
S. Rappos

APPENDIX L



October 27, 2020

(Via Mail and Email)

To: The Tenants of the following units:

242 Penetanguishene – Units 3, 10, 11 and 16
 244 Penetanguishene – Units 8, 11, 14, and 14;
 246 Penetanguishene – Units 1, 3, 4, 6, 7, 8, 12, 13 and 14;
 252 Penetanguishene – Units 2, 8, 9, 10, 11, 12, 13, 14 and 15

RSM Canada Limited

Licensed Insolvency Trustee

11 King St W
 Suite 700, Box 27
 Toronto, ON M5H 4C7

O +1 416 480 0160

F +1 416 480 2646

rsmcanada.com

Re: Letter of October 13, 2020 from Ms. Sonja Hodis to the Tenants of Units Owned by Fernwood Developments (Ontario) Corporation (“Fernwood”)

On February 12, 2020, RSM Canada Limited (“**RSM**”) was appointed receiver (the “**Receiver**”) of Fernwood’s property including the units set out above (the “**Fernwood Units**”), by Order (the “**Appointment Order**”) of the Ontario Superior Court of Justice. A copy of the Appointment Order is attached.

On July 29, 2020, Fernwood was assigned into bankruptcy and RSM was appointed trustee (the “**Trustee**”) of the estate of Fernwood. A copy of RSM’s certificate of appointment, issued by the Office of the Superintendent of Bankruptcy Canada, is attached.

The Receiver is aware of the letter dated October 13, 2020 (the “**October 13th Letter**”) sent by Ms. Sonja Hodis, counsel to Simcoe Standard Condominium Corporation #240 (“**SSCC 420**”), to the tenants of the Fernwood Units.

In RSM’s view, the steps taken by SSCC No. 420 are in clear and direct violation of both the terms of the Appointment Order and Section 69.3 of the *Bankruptcy and Insolvency Act*.

As a result, the Receiver has scheduled a court date of November 27, 2020 to seek an Order confirming that SSCC 420 is not permitted to collect rent from the tenants and to require SSCC 420 to pay to the Receiver any rents that it has collected.

In the interim, the Receiver asks that tenants of the Fernwood Units withhold payment of November 2020 rent (or any other rent) until the Court makes a determination about the party to whom the rent should be paid. We will forward to you a copy of any Order issued by the Court. In the meantime, we would be happy to answer any questions that you may have.

Yours truly,

RSM CANADA LIMITED, in its capacity as Court-appointed Receiver and Trustee of the Estate of Fernwood Developments (Ontario) Corporation and not in its personal or corporate capacity

Per:

Arif Dhanani, CA, CPA, CIRP, LIT
 Vice-President

THE POWER OF BEING UNDERSTOOD
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APPENDIX M

Dhanani, Arif

From: Dhanani, Arif
Sent: Tuesday, October 27, 2020 1:33 PM
To: Sonja Hodis
Cc: Jeff.Larry@paliareroland.com
Subject: Re: Correspondence from RSM to Tenants of Fernwood Owned Units.

Ms. Hodis,

Thank you for your email below. You will be able to state your position to the Court on November 27, 2020.

Regards,

Arif Dhanani
Vice President

RSM Canada Limited
11 King St. W., Suite 700, Box 27, Toronto, Ontario, Canada, M5H 4C7
D: 647.725.0183 F: 416.480.2646 I E: arif.dhanani@rsmcanada.com I W: www.rsmcanada.com

----- Original Message -----

From: Sonja Hodis <sonja@hodislaw.com>
Date: Tue., Oct. 27, 2020, 1:22 p.m.
To: "Dhanani, Arif" <arif.dhanani@rsmcanada.com>
CC: "Jeff.Larry@paliareroland.com" <Jeff.Larry@paliareroland.com>
Subject: Re: Correspondence from RSM to Tenants of Fernwood Owned Units.

Mr. Dhanani

I acknowledge receipt of your correspondence.

I believe your correspondence only creates more confusion for the tenants and creates the possibility that the tenants will not pay rent at all. It also increases the costs being incurred by SSCC 420 to collect the rents pursuant to s. 87 of the Condo Act.

If you are not going to collect rents from the tenants, what is the prejudice in SSCC 420 collecting it and holding it pending the court hearing?

If SSCC 420 loses any payments or incurs additional costs as a result of this notification sent to the tenants, we will hold the Receiver responsible for those losses and costs and will continue to add those costs to the amounts owing for common expenses for the units in question.

We advised Mr. Larry that we would provide an accounting of any monies received and would hold them without prejudice to any party pending the court motion. At least this way the rent was collected from the tenants and the tenants do not take advantage of this situation and not pay rent at all to anyone.

We do not believe that this action was warranted nor appropriate in the circumstances and is high handed.

Sonja Hodis
Barrister, Solicitor & Notary
62 Camelot Square
Barrie, Ontario
L4M 0C2

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On Oct 27, 2020, at 12:54 PM, Dhanani, Arif <arif.dhanani@rsmcanada.com> wrote:

Ms. Hodis,

Please see attached correspondence sent by the Receiver to the tenants of the Fernwood owned units.

Yours truly,

RSM CANADA LIMITED, in its capacity as Court-appointed
Receiver of Fernwood Developments (Ontario) Corporation
and not in its personal or corporate capacity

Arif Dhanani
Vice President

RSM Canada Limited
Licensed Insolvency Trustee
11 King St. W., Suite 700, Box 27, Toronto, Ontario, Canada, M5H 4C7
D: 647.725.0183 F: 416.480.2646 | E: arif.dhanani@rsmcanada.com | W: www.rsmcanada.com

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<Letter to Tenants from Receiver.pdf><Fernwood_-
_Receivership_Order_dated_February_12__2020.PDF><Certificate of Appointment -
Bankruptcy.pdf>

MARSHALLZEHR GROUP INC.

-and-

**FERNWOOD DEVELOPMENTS (ONTARIO)
CORPORATION
Respondent**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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Lawyers for the Receiver, RSM Canada Limited