

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

**BETWEEN:**

**MARSHALLZEHR GROUP INC.**

**Applicant**

**-and-**

**FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION**

**Respondent**

**SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER**

**MAY 7, 2021**

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## I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”), RSM Canada Limited 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**”).
2. This report (the “**Supplemental Report**”) is a supplement to the third report of the Receiver dated April 30, 2021 (the “**Third Report**”), and should be read in conjunction with the Third Report.
3. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Receiver’s First, Second and Third Reports.

### Purpose of the Supplemental Report

4. The purpose of the Supplemental Report is to provide the Court with information regarding certain inaccuracies and to clarify certain matters as they relate to statements set out in the responding motion records of each of 1267989 Ontario Inc. o/a Duncan Drywall (“**Duncan Drywall**”) and Jeff McKeever Plumbing and Contracting (“**JMP**”) dated May 5, 2021.

## II. RESPONDING MOTION RECORD OF DUNCAN DRYWALL

5. First, the Receiver’s position is that the priority, quantum, and enforceability of Duncan Drywall’s lien claim is to be determined pursuant to a process to be set in consultation with Duncan Drywall and to be approved by the Court. If necessary, the Receiver will bring a motion for advice and direction to determine the lien claims process. Pending determination of the merits of Duncan Drywall’s lien claim, the Receiver will hold the full amount of the lien claim, in trust.

6. In its responding motion record and specifically paragraph 3 and 4 of the affidavit of Robert Duncan sworn May 5, 2021 (the "**Duncan Affidavit**"), Mr. Duncan sets out that Duncan Drywall requests of the Court that the HST in respect of its lien claim and an additional 25% of the total lien claim amount plus HST be set aside for its legal costs. The Receiver has no objection to holding, in addition to the lien claim amount, the HST in respect of Duncan Drywall's lien claim. The Receiver understands that when a party is seeking to vacate a lien claim under s. 44 of the *Construction Act*, without notice to the lien claimant, the party is required to pay into Court the amount of any lien claim plus 25%. However, the Receiver is not seeking to vacate Duncan Drywall's lien claim under the *Construction Act*. The Receiver understands from its counsel, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), that there is no basis at this time for Duncan Drywall's request that any amount be set aside for its legal costs.
7. At paragraph 7 of the Duncan Affidavit, Mr. Duncan sets out that Duncan Drywall should be granted leave to proceed with its construction lien action in Barrie as RSM has not in the last year determined priorities with respect to lien claims. The Receiver has not yet determined priorities because the Receiver is of the view that it makes sense to determine priorities after the sale of the Property, which is the purpose of the within motion. Furthermore, given the Appointment Order and the stay provisions therein and the collective process at hand, the Receiver is of the view that granting leave to proceed with an action against Fernwood in another Court would result in a disjointed process with increased costs and, depending on the set of facts presented to the Barrie Court versus the Commercial List, conflicting decisions in each Court.
8. At paragraph 25 of the Duncan Affidavit, Mr. Duncan sets out that the Receiver reported that the first mortgage in favour of MarshallZehr Group Inc. ("**MZG**") was registered on September 20, 2016. This is inaccurate. As part of its application materials and specifically Exhibit D to the affidavit or Murray Snedden sworn January 30, 2020, MZG provided a copy of its charge/mortgage dated December 19, 2013. Paragraph 15 of the Receiver's Second Report refers to a commitment

letter dated September 20, 2016, which is the date that the terms of MZG's mortgage may have been refinanced or amended. As such, MZG's mortgage was registered approximately 27 months or 2.25 years prior to when Duncan Drywall states that it commenced work.

9. At paragraph 48 of the Duncan Affidavit, Mr. Duncan states that Paliare Roland suggested that Duncan Drywall's lien was registered out of time and that there is no reasonable basis for this claim. Duncan Drywall's lien claim was registered on March 5, 2020 in the amount of \$178,195. The basis for Paliare Roland's suggestion is that as at October 31, 2019, Fernwood's aged accounts payable listing (the "**October 2019 AP Listing**") sets out that Duncan Drywall was owed \$178,195, which is the amount of its lien claim, not including HST. The October 2019 AP Listing also sets out that the amount owed to Duncan Drywall is greater than 90 days old, which would indicate that all invoices from Duncan Drywall in respect of its lien claim were rendered by July 31, 2019 for work completed to that date. This information was the basis for Paliare Roland's comment that Duncan Drywall's lien may not have been registered within the timeframes required under construction legislation. A copy of the October 2019 AP Listing is attached hereto as **Appendix "A"**.
10. In addition to the foregoing, Fernwood's books and records contained a statutory declaration signed by Robyn Duncan (the "**DD Stat Dec**") stating that as at the date of the DD Stat Dec, Duncan Drywall was owed \$178,195. The DD Stat Dec was initially dated December 9, 2019 and then "December" and "2019" were struck out and replaced with "January" and "2020". A copy of the DD Stat Dec is attached hereto as **Appendix "B"**.

### **III. RESPONDING MOTION RECORD OF JMP**

11. As set out in the Receiver's Third Report, the Receiver notes that JMP has not even made a claim for priority in its statement of claim with respect to its lien, nor

did JMP name MZG, the mortgagee, as a party to the claim. Paliare Roland advises that both are required to validly assert priority over MZG's charge.

12. With respect to JMP's lien claim, its contract price is \$211,989.63 plus HST. The Receiver's understanding is that Fernwood's holdback obligations would be no more than \$21,198.96 plus HST. The Receiver notes that a letter from JMP's previous counsel dated July 24, 2020 (the "**July 24<sup>th</sup> Letter**") expressly confirmed that JMP's priority claim over MZG's mortgage was in the amount of \$21,198.96. A copy of the July 24<sup>th</sup> Letter is attached hereto as **Appendix "C"**.
13. In its responding motion record and specifically paragraph 7 of the affidavit of Jeff McKeever sworn May 5, 2021 (the "**JMP Affidavit**"), Mr. McKeever sets out that Paliare Roland alleged, based on a statutory declaration signed by Mr. McKeever (the "**JMP Stat Dec**"), that JMP's lien was registered out of time. JMP's lien claim in the amount of \$173,489 was registered on February 13, 2020. Similar to the situation with Duncan Drywall, the JMP Stat Dec was initially dated December 9, 2019 and then "December" and "2019" were struck out and replaced with "January" and "2020". A copy of the JMP Stat Dec is attached to the JMP Affidavit as Exhibit B.
14. In addition to the foregoing, the October 2019 AP Listing sets out that JMP was owed \$102,611.20 as at October 31, 2019 and that this amount was over 90 days old, which would indicate that approximately 60% of all invoices from JMP in respect of its lien claim were rendered by July 31, 2019 for work completed to that date.
15. At paragraph 20 of the JMP Affidavit, Mr. McKeever seeks leave of the Court to amend JMP's statement of claim. The Receiver does not oppose this request.
16. At paragraph 21 of the JMP Affidavit, Mr. McKeever indicates that the Receiver's motion record was short served and as a result, JMP requests an adjournment of the within motion. The Receiver respectfully disagrees that its motion was short served. As set out in the JMP Affidavit, the Receiver's motion was served

on April 30, 2021 at 5:00 pm, which is 10 days prior to the return date of the motion. In addition to this, Mr. Daffern has known for 3 months that the Receiver's motion was forthcoming. JMP could have brought its own motion for leave within that time.

17. At paragraphs 23 and 30 of the JMP Affidavit, Mr. McKeever asserts that both the Receiver and Paliare Roland are biased in favour of MZG. There is no basis for this statement. The Receiver is a neutral party and an officer of the Court as is its independent legal counsel. The Receiver has taken steps to protect and preserve the Property and prioritize urgent matters in its administration of the receivership. Either the Receiver or its independent counsel are able to hold in trust monies as they relate to the lien claims and distribute them as ordered by the Court or agreed to by both the lien claimant and MZG. This is a usual practice when RSM is appointed as receiver or trustee in bankruptcy of any debtor and funds are held in trust for the creditors of the debtor, and is consistent with the terms of the APA, which provides that the Priority Payables are to be held by the Receiver, in trust.
18. At paragraphs 25 and 26 of the JMP Affidavit, Mr. McKeever asserts that Paliare Roland's legal opinion dated February 24, 2021 (the "**Legal Opinion**") is inaccurate because certain details regarding advances and the value of the land are not set out therein. The Receiver believes that JMP is conflating the determination of priorities with the validity and enforceability of MZG's security.
19. At paragraph 27 of the JMP Affidavit, Mr. McKeever sets out that JMP requests of the Court that the HST in respect of its lien claim and an additional 25% of the total lien claim amount plus HST be set aside for its legal costs. As set out above, the Receiver has no issue with holding the HST on the lien claim in addition to the Priority Payable reserved for JMP, pending determination of the priority, quantum, and enforceability of its lien claim; however, there is no basis for JMP's claim for costs as the Receiver is not seeking to vacate JMP's lien claim at this time.

20. At paragraph 28 of the JMP Affidavit, Mr. McKeever requests of the Court that it lift the stay of proceedings and that JMP be allowed to proceed with its action in the Barrie Court. The Receiver's view with respect to a lifting of the stay and multiple proceedings against Fernwood in different Courts is set out above.

All of which is respectfully submitted to this Court as of this 6<sup>th</sup> day of May 2021.

**RSM CANADA LIMITED**

in its capacity as the Court-appointed receiver  
of the property, assets and undertaking of  
Fernwood Development (Ontario) Corporation  
and not in its personal capacity



Per:

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

# **APPENDIX A**

**Barrie School House Project**  
**A/P Aging Summary**  
 As of October 31, 2019

	Current	1 - 30	31 - 60	61 - 90	> 90	TOTAL
Ampot Portable Toilets Inc.	2,067.48	0.00	0.00	0.00	0.00	2,067.48
Angel Wings - Shelly Pellis Clarke	0.00	0.00	0.00	0.00	6,487.11	6,487.11
Barrie Carpet & Hardwood	0.00	0.00	0.00	0.00	16,177.81	16,177.81
Barrie Glass & Mirror Ltd	0.00	0.00	0.00	0.00	453.13	453.13
Bayshore Property Management	14,846.00	18,720.00	0.00	0.00	43,680.00	77,246.00
BMO MC	0.00	41,961.74	0.00	0.00	0.00	41,961.74
Bosna Home Renovation	0.00	0.00	0.00	0.00	15,250.00	15,250.00
Brecour Cleaning	0.00	0.00	0.00	0.00	350.30	350.30
Chris Belinger	12,881.57	0.00	0.00	0.00	0.00	12,881.57
City of Barrie	20,000.00	0.00	0.00	0.00	4,230.15	24,230.15
City of Barrie- Property Tax	40,833.79	0.00	325.40	2,623.98	40,833.79	84,616.96
Con Mar Group	0.00	0.00	0.00	0.00	33,137.82	33,137.82
Dalmar Columns Inc	0.00	0.00	0.00	0.00	11,768.95	11,768.95
DLG Services Inc.	0.00	0.00	0.00	0.00	8,008.88	8,008.88
Duncan Drywall	0.00	0.00	0.00	0.00	178,195.00	178,195.00
Enbridge - 10182	0.00	(12.45)	28.92	45.78	183.43	245.68
Enbridge - 10183	0.00	24.77	26.75	11.73	189.56	252.81
Enbridge - 10184	0.00	24.06	26.52	10.23	175.97	236.78
Enbridge - 10185	0.00	24.06	26.52	5.58	183.43	239.59
Enbridge - 10186	0.00	25.81	27.46	13.34	235.49	302.10
Enbridge - 10187	0.00	25.81	26.76	16.01	186.21	254.79
Enbridge - 10188	0.00	29.99	27.69	26.71	237.12	321.51
Enbridge - 10210	0.00	25.81	27.72	211.33	32.72	297.58
Enbridge - 10211	0.00	25.47	13.76	26.82	215.79	281.84
Enbridge - 10212	0.00	24.06	26.64	10.30	183.57	244.57
Enbridge - 10213	0.00	24.77	27.09	10.45	213.33	275.64
Enbridge - 10214	0.00	24.43	26.79	10.31	193.61	255.14
Enbridge - 10216	0.00	25.81	26.97	14.94	200.85	268.57
Enbridge - 10217	0.00	24.06	26.91	9.85	202.26	263.08
Enbridge - 10683	0.00	0.00	25.42	112.68	0.00	138.10
Enbridge - 10753	0.00	84.29	37.48	0.00	147.22	268.99
Enbridge - 10762	0.00	35.52	53.66	114.59	548.82	752.59
Enbridge - 10781	0.00	46.77	40.57	44.18	(151.64)	(20.12)
Enbridge - 10782	0.00	(79.63)	46.05	35.38	116.03	117.83
Enbridge - 10809	0.00	33.47	9.23	41.00	124.12	207.82
Enbridge - 10822	0.00	133.24	96.68	32.54	(47.26)	215.20
Enbridge - 10826	0.00	34.15	43.52	35.66	0.00	113.33
Enbridge - 10827	0.00	39.27	55.28	36.33	158.62	289.50
Enbridge - 10828	0.00	40.29	47.78	38.85	153.05	279.97
Enbridge - 10850	0.00	31.14	40.29	(195.92)	225.92	101.43
Enbridge - 10851	0.00	36.89	(26.76)	(321.11)	304.72	(6.26)
Enbridge - 10853	0.00	37.56	41.66	41.61	272.65	393.48
Enbridge - 10855	0.00	34.50	47.37	48.20	280.04	410.11
Enbridge - 10856	0.00	35.30	42.26	0.00	191.73	269.29
Enbridge - 10857	0.00	35.18	36.89	36.36	130.50	238.93
Enbridge - 61887	0.00	49.50	54.48	38.59	143.81	286.38
Enbridge - 62663	0.00	41.66	28.92	40.58	116.60	227.76
Enbridge - 62666	0.00	35.87	20.68	150.05	(67.74)	138.86
Enbridge - 62667	0.00	33.47	33.49	40.38	125.62	232.96
Enbridge - 62669	0.00	(91.00)	28.92	40.58	276.40	254.90
Enbridge - 626803	0.00	638.07	0.00	0.00	0.00	638.07
Enbridge - 62681	0.00	40.42	71.71	36.88	82.00	231.01
Enbridge - 62684	0.00	35.52	152.36	0.00	(0.30)	187.58
Enbridge - 62685	0.00	36.20	80.73	82.14	(52.52)	146.55
Enbridge - 62686	0.00	29.99	38.50	41.42	128.48	238.39
Enbridge - 62687	0.00	30.33	29.28	38.59	52.67	150.87
Enbridge - 89275	0.00	(75.21)	0.00	0.00	384.66	309.45
Federated Insurance	22,000.00	0.00	0.00	0.00	17,490.64	39,490.64
Georgian Waste Services	0.00	0.00	0.00	0.00	9,509.84	9,509.84
Glory Cleaning	0.00	0.00	0.00	0.00	210.00	210.00
Glynn Group Inc.	0.00	0.00	0.00	0.00	20,683.52	20,683.52
Grounded Electrical Services	0.00	0.00	0.00	0.00	82,038.00	82,038.00
Hapamp Elmvalle Limited	0.00	0.00	0.00	0.00	5,117.63	5,117.63
Hummel Concrete Floors	0.00	0.00	0.00	0.00	7,295.63	7,295.63
Jeff McKeever Plumbing and Contracting	0.00	0.00	0.00	0.00	102,611.20	102,611.20
JM Painting Inc.	0.00	0.00	0.00	0.00	46,137.76	46,137.76
John D. Bell Associates Ltd.	0.00	0.00	0.00	0.00	1,583.41	1,583.41
Jordan Zukowski	0.00	11,300.00	11,300.00	11,300.00	180,800.00	214,700.00
Kelly's Truck Inc.	0.00	0.00	0.00	0.00	5,313.83	5,313.83
Lyon Financial	0.00	0.00	0.00	0.00	3,915.45	3,915.45
Maacon Construction Corp.	0.00	0.00	0.00	0.00	10,839.55	10,839.55
Mack Constructions Inc.	0.00	0.00	0.00	0.00	28,740.42	28,740.42
McKick Masonry	0.00	0.00	0.00	0.00	73,961.00	73,961.00
Melvin Visser	25,492.64	0.00	0.00	0.00	0.00	25,492.64
Millex	0.00	0.00	0.00	0.00	2,133.14	2,133.14
Moduloc	322.05	322.05	322.05	0.00	0.00	966.15
Nezz Electrical o/a 2242141 Ontario Ltd	0.00	0.00	0.00	0.00	122,285.30	122,285.30

**Barrie School House Project**  
**A/P Aging Summary**  
 As of October 31, 2019

	Current	1 - 30	31 - 60	61 - 90	> 90	TOTAL
Orchard Design	0.00	0.00	0.00	0.00	6,870.70	6,870.70
Parsons Precast Inc	0.00	0.00	0.00	0.00	11,442.38	11,442.38
Pearson Engineering	0.00	0.00	0.00	0.00	3,114.50	3,114.50
Plumbtech	0.00	0.00	0.00	0.00	42,609.05	42,609.05
Power Stream	0.00	0.00	0.00	0.00	3,360.25	3,360.25
Precision	0.00	0.00	0.00	0.00	6,667.00	6,667.00
Priority Mechanical Services Ltd.	0.00	0.00	0.00	5,406.52	270,369.30	275,775.82
Priority Submetering	0.00	0.00	0.00	0.00	45,130.51	45,130.51
Ray Tomporowski	0.00	0.00	0.00	0.00	12,890.70	12,890.70
Raywal Limited Partnership	0.00	0.00	0.00	0.00	24,207.55	24,207.55
Receiver General	(726,844.65)	2,112,603.14	(3,429.90)	(8,264.26)	(1,376,789.88)	(2,725.55)
Receiver General - RC	45.34	0.00	0.00	0.00	0.00	45.34
Receiver General - SD	0.00	33,011.91	0.00	0.00	0.00	33,011.91
Rogers	0.00	5,208.67	5,208.11	0.00	5,366.51	15,783.29
Royal City Bookkeeping Services	1,420.13	0.00	2,324.84	529.31	21,843.71	26,117.99
Rudy Mak Surveying Ltd.	0.00	0.00	0.00	0.00	9,645.91	9,645.91
Sandpiper Energy Solutions	9,000.00	0.00	0.00	518.12	(1,389.88)	8,128.24
Secure Store	0.00	0.00	0.00	0.00	672.35	672.35
Simcoe Building Centre	(1,869.00)	4,978.20	5,387.78	4,981.32	397,857.91	411,336.21
Smith Valeriotte	0.00	0.00	0.00	0.00	1,024.77	1,024.77
SR Law	200.00	0.00	0.00	0.00	21,754.48	21,954.48
Stairrite	0.00	0.00	0.00	0.00	5,597.95	5,597.95
Sunbelt Rentals Inc	0.00	0.00	0.00	0.00	6,891.45	6,891.45
Supplementary Property Tax (Owner's)	0.00	0.00	0.00	0.00	23,482.94	23,482.94
TC Cabinets Group Inc	0.00	0.00	0.00	0.00	11,451.42	11,451.42
Tomlin Industries (2000) Inc.	0.00	0.00	0.00	0.00	46,219.10	46,219.10
Van Harten Surveying Inc.	0.00	0.00	0.00	0.00	4,490.21	4,490.21
Walter	3,000.00	0.00	0.00	0.00	0.00	3,000.00
Weiler & Company	0.00	565.00	22,600.00	0.00	5,494.10	28,659.10
Wolfenden Construction Inc.	0.00	0.00	0.00	0.00	41,462.25	41,462.25
WSIB	854.11	560.17	0.00	0.00	7,594.81	9,009.09
Yellow Pages	0.00	0.00	0.00	0.00	571.23	571.23
<b>TOTAL</b>	<b>(575,750.54)</b>	<b>2,230,930.10</b>	<b>45,581.23</b>	<b>18,127.93</b>	<b>745,420.08</b>	<b>2,464,308.80</b>

# **APPENDIX B**

**STATUTORY DECLARATION**

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

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

**DO SOLEMNLY DELARE THAT:**

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

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

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

)  
)  
) Robyn Duncan  
)  
)

January, 2020  
Bryony Buchanan  
A Commissioner, etc.

# APPENDIX C

# BARRISTON LAW

RESPOND TO: 151 FERRIS LANE, SUITE 202, BARRIE, ON, L4M 6C1

Friday, July 24, 2020

BY EMAIL ONLY: [JEFF.LARRY@PALIAREROLAND.COM](mailto:JEFF.LARRY@PALIAREROLAND.COM), [SARITA.SANASIE@PALIAREROLAND.COM](mailto:SARITA.SANASIE@PALIAREROLAND.COM)

Jeffrey Larry  
Paliare Roland  
155 Wellington St. West  
35<sup>th</sup> Floor  
Toronto, ON  
M5V 3H1

Dear Mr. Larry:

RE:           **JEFF McKEVER PLUMBING V FERNWOOD DEVELOPMENTS CORP.**  
              **OUR FILE NO.           94767**

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Please find enclosed the documents requested by the Receiver in accordance with this index:

Tab	Document Description
1	Statement of Claim
2	Certificate of Action
3	Instrument Registered on Title
4	Contract
5	Invoices
6	Statutory Declaration and Relevant Pictures

The Receiver has asked us to calculate what amount our client's lien takes priority over the MarshallZehr mortgage and support for that calculation. If the MarshallZehr mortgage is a "building mortgage", and pursuant to section 78(2) of the *Construction Act*, our client's lien takes priority over that mortgage to the extent of the deficiency in the holdback. I understand that Fernwood did not holdback any amount and therefore the holdback is entirely deficient.

Pursuant to the holdback requirements of section 22(1) of the *Construction Act*, Fernwood was required to holdback ten percent of the services or materials that were actually supplied. Our client supplied services and materials in the amount of \$211,989.63, ten percent of which totals \$21,198.96. As such, our client's priority over the MarshallZehr mortgage is the amount of \$21,198.96.

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We deliver peace of mind.



Please let me know if you require any further information.

Yours very truly,  
**BARRISTON**

Per: Joshua Valler  
/lp  
[jvaller@barristonlaw.com](mailto:jvaller@barristonlaw.com)  
Enclosures Attached





Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 12-May-2020  
Délivré par voie électronique :  
Barrie

**MATTER OF** the Construction Act, R.S.O. 1990, c. C.30

**B E T W E E N:**

(Court Seal)

JEFF MCKEVER, c.o.b. as Jeff McKever Plumbing and Contracting

Plaintiff

and

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

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

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

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

TO: Fernwood Developments (Ontario) Corp.  
490 York Road  
Building E, Unit 1  
Guelph ON  
N1E 6V1

## CLAIM

1. The Plaintiff claims:

- (a) the sum of ONE HUNDRED AND SEVENTY THREE THOUSAND FOUR HUNDRED AND EIGHTY NINE DOLLARS AND SIXTY THREE CENTS (\$173,489.63);
  - (i) as the amount owing for services and materials provided by the Plaintiff at the request of the Defendant;
  - (ii) in the alternative, as restitution to the Plaintiff of the reasonable value of the work, services, and materials supplied by the Plaintiff to the Defendant to the detriment of the Plaintiff and the benefit of the Defendant, on the basis of *quantum meruit*; or
  - (iii) in the further alternative, as damages for breach of contract;
- (b) A Declaration that the Plaintiff is entitled to a construction lien against the lands and premises referred to herein;
- (c) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this proceeding, plus all applicable taxes;

-\*-

- (f) for the purposes of the aforesaid, that all proper directions be given, inquiries made, and accounts taken; and
- (g) Such further and other Relief as to this Honourable Court may seem just.

2. The Plaintiff is a sole proprietor carrying on business as Jeff McKeever Plumbing and Contracting. At all material times, the Plaintiff carried on business as a plumber.

3. The Defendant is a corporation incorporated pursuant to the laws of Ontario pursuant to corporate number 1461231 with its head office located in Rockwood, Ontario.

4. On or about June 23, 2017, plaintiff entered into a written contract with the Defendant for the supply of material, labour, and installation of certain plumbing services for a development located at the municipal address of 248 Penetanguishene Rd and 250 Penetanguishene Road in Barrie, Ontario.

5. The total amount of the contract for services rendered was the sum of \$211,989.63 inclusive of HST.

6. The Plaintiff performed all of its work required pursuant to the contract and invoices were submitted for the amount outstanding under the contract. There is presently due and owing by the Defendant to the Plaintiff the sum of \$173,489.63 inclusive of HST which remains unpaid despite repeated requests for payment by the Plaintiff.

7. By reason of performing the work and supplying the materials as herein described, the Plaintiff is entitled to a lien upon the interest of the property for the sum of \$173,489.63 inclusive

of HST, together with pre-judgment interest and the costs of this action pursuant to the provisions of the *Construction Act*.

8. On February 13, 2020, pursuant to the *Construction Act*, R.S.O. 1990, c. C.30, the Plaintiff registered a Construction Lien in the Land Registry Office for the County of Simcoe as Instrument number SC1661911 in the amount of \$173,489.63, a true copy of which is attached hereto as Schedule "A".

9. In addition to the above, or in the alternative, the Plaintiff states that the Owner has been unjustly enriched by the Plaintiff's supply of materials and labour and that the Plaintiff has suffered a corresponding deprivation. The Plaintiff relies on the doctrine of unjust enrichment and claims compensation on a *quantum meruit* basis.

10. The Plaintiff proposes that the trial of this action take place at the City of Barrie, in the Province of Ontario.

(Date of issue)

**BARRISTON LLP**  
Barristers and Solicitors  
151 Ferris Lane, Suite 202  
Barrie, ON L4M 6C1

**Joshua Valler** (LSO 70780A)  
jvaller@barristonlaw.com  
Tel: (705) 792-9200  
Fax: (705) 792-6911

Lawyers for the Plaintiff

-U-

**SCHEDULE "A"**LRO # 51 **Construction Lien**

Received as SC1661911 on 2020 02 13 at 16:17

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

**Properties**

PIN 58831 - 1862 LT

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

Address BARRIE

**Consideration**

Consideration \$173,489.63

**Claimant(s)**

Name MCKEVER, JEFFERY  
Address for Service 8889 Smith Road  
R.R.#1  
Utopia, ON  
LCM 1T0

I am the lien claimant and the facts stated in the claim for lien are true.

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

**Statements**

Name and Address of Owner Fernwood Developments (Ontario) Corporation, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
Name and address of person to whom lien claimant supplied services or materials Jordan Cicarl, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
Time within which services or materials were supplied from 2017/06/23 to 2020/02/13  
Short description of services or materials that have been supplied Plumbing to new development consisting of 7 new units. Contract price or subcontract price \$211,989.63  
Amount claimed as owing in respect of services or materials that have been supplied \$173,489.63

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule. The lien claimant is Jeffery McKeever, carrying on business as Jeff McKeever Plumbing and Contracting.

**Signed By**

Timothy Donald Fountain 202-151 Ferris Lane acting for Signed 2020 02 13  
Barrie Applicant(s)  
L4M 6C1

Tel 705-792-9200

Fax 705-792-6911

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

**Submitted By**

BARRISTON LLP 202-151 Ferris Lane 2020 02 13  
Barrie  
L4M 6C1

Tel 705-792-9200

Fax 705-792-6911

**Fees/Taxes/Payment**

Statutory Registration Fee \$65.05  
Total Paid \$65.05

**File Number**

Claimant Client File Number : 94767

JEFF MCKEVER, c.o.b. as Jeff McKeever Plumbing  
Plaintiff

-and- FERNWOOD DEVELOPMENTS (ONTARIO) CORP.  
Defendant

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

PROCEEDING COMMENCED AT  
BARRIE

**STATEMENT OF CLAIM**

**BARRISTON LLP**

Barristers and Solicitors  
151 Ferris Lane, Suite 202  
Barrie, ON L4M 6C1

**Joshua Valler** (LSO 70780A)

jvaller@barristonlaw.com

Tel: (705) 792-9200

Fax: (705) 792-6911

Lawyers for the Plaintiff

**File Number: 94767**





Court File No./N° du dossier du greffe: CV-20-00000767-0000  
FOI

# CERTIFICATE OF ACTION UNDER SECTION 36 OF THE ACT

*Construction Act*

.....  
Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Electronically issued : 12-May-2020

Délivré par voie électronique

Barrie

**JEFF MCKEVER, c.o.b. as Jeff McKeever Plumbing**

Plaintiff(s)

And

(court seal)

**FERNWOOD DEVELOPMENTS (ONTARIO) CORP.**

Defendant(s)

## CERTIFICATE OF ACTION

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

**SC1661911**

Date: **May 12, 2020**

.....  
(registrar or local registrar)

## SCHEDULE A

Description of premises:

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

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

JEFF MCKEVER, c.o.b. as Jeff McKever Plumbing  
Plaintiff

-and- FERNWOOD DEVELOPMENTS (ONTARIO) CORP.  
Defendant

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

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

PROCEEDING COMMENCED AT  
BARRIE

**CERTIFICATE OF ACTION**

**BARRISTON LLP**

Barristers and Solicitors  
151 Ferris Lane, Suite 202  
Barrie, ON L4M 6C1

**Joshua Valler** (LSO 70780A)

[jvaller@barristonlaw.com](mailto:jvaller@barristonlaw.com)

Tel: (705) 792-9200

Fax: (705) 792-6911

Lawyers for the Plaintiff

**File Number: 94767**



**Properties**

**PIN** 58831 - 1862 LT  
**Description** PART OF BLOCK 6, PLAN 51M983, PART 3 PLAN 51R40027; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 AS IN SC1189600; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1354411; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 51R40027 IN FAVOUR OF SIMCOE STANDARD CONDOMINIUM PLAN NO. 420 AS IN SC1496430; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS SIMCOE STANDARD CONDOMINIUM PLAN NUMBER 420 AS IN SC1496430; CITY OF BARRIE  
**Address** BARRIE

**Consideration**

**Consideration** \$173,489.63

**Claimant(s)**

**Name** MCKEVER, JEFFERY  
**Address for Service** 8889 Smith Road  
 R.R.#1  
 Utopia, ON  
 L0M 1T0

I am the lien claimant and the facts stated in the claim for lien are true.

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

**Statements**

Name and Address of Owner Fernwood Developments (Ontario) Corporation, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
 Name and address of person to whom lien claimant supplied services or materials Jordan Cicarl, 490 York Road, Building E, Unit 1, Guelph, ON N1E 6V1  
 Time within which services or materials were supplied from 2017/06/23 to 2020/02/13  
 Short description of services or materials that have been supplied Plumbing to new development consisting of 7 new units. Contract price or subcontract price \$211,989.63  
 Amount claimed as owing in respect of services or materials that have been supplied \$173,489.63

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien  
 Schedule: The lien claimant is Jeffery McKeever, carrying on business as Jeff McKeever Plumbing and Contracting.

**Signed By**

Timothy Donald Fountain 202-151 Ferris Lane acting for Signed 2020 02 13  
 Barrie Applicant(s)  
 L4M 6C1

Tel 705-792-9200

Fax 705-792-6911

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

**Submitted By**

BARRISTON LLP 202-151 Ferris Lane 2020 02 13  
 Barrie  
 L4M 6C1

Tel 705-792-9200

Fax 705-792-6911

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$65.05

**Total Paid** \$65.05

**File Number**

**Claimant Client File Number :** 94767



# Independent Sub- Contractor Agreement

## The School House, Barrie Ontario

This Agreement (the "Agreement") is made and entered into as of 23<sup>rd</sup> day of June, ~~2015~~ <sup>2017</sup>  
(the "Effective Date") between **FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION** (the  
"Company"), a limited liability company existing under the laws of the Province of Ontario and having its  
principal offices located at 5556 5<sup>th</sup> Line, Rockwood, ON and

McKeever Plumbing Barrie Ontario

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule "A" Project Scope of Work

Schedule "B" Standard Specifications (by specific Trade)

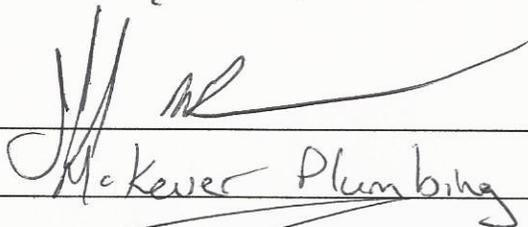
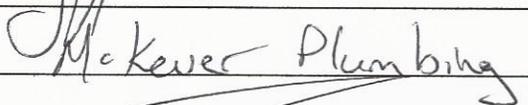
Schedule "C" Construction Drawings and Site Plan

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

Schedule "E" Site Rules and Regulations

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

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

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

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

# Schedule A

## Project Scope of Work

### Project Description:

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

### Start / Completion Dates:

- **Start Date:** subject to Building Permit availability and Building Department Inspections, June ~~2015~~ 2017
- **Completion Date:** TBD ~~2015~~

### Payment Terms:

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

Fernwood to Provide Deposit of \$30k within 7 business days of Contract Signing.

- \* Fernwood to Verify all Plumbtech invoice
- McKiver Plumbing will match Plumbtech Quote For previous building on 16 unit Building.
- Fernwood & McKiver to Agree.

**Schedule B**  
**Specifications**

Please attach Specifications for the job here

As Attached or Similar.  
To be verified by Jordan & Jeff.

## Schedule C

### Construction Drawings and Site Plan

Please attach Construction Drawings and Site Plan drawings here

Block 4 Penetanguishene Barrie.

## Schedule D

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

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

*To Provide*

## Schedule E

### Site Rules and Regulations

#### SITE RULES AND REGULATIONS

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

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





Jeff McKeever Plumbing and Contracting

8889 Smith Rd.  
 RR#1, Utopia, Ont.  
 L0M 1T0  
 (705) 734-2297

# Invoice

Date	Invoice #
6/29/2018	1250

Invoice To
Fernwood Developments (Ont) Corp. 5556 5th line. Rockwood, Ont. N0B 2K0

P.O. No.	Terms	Project

Description	Qty	Rate	Amount
1/3 of project due on completion of rough-in of Block #4.		0.00	0.00
2-End Units	1	18,926.60	18,926.60
5- Interior Units	1	32,377.67	32,377.67
Sump Pumps	1	666.68	666.68
Labour	100	85.00	8,500.00
GST On Sales		13.00%	7,861.22
<p><i># 2643</i>  <i>June 9, 2018</i>  <i># 30 000.00</i></p> <p><i># 2710 NSF</i>  <i>Mar, 28, 2019</i>  <i># 8500.00</i></p> <p><i># 2717</i>  <i>Apr, 12, 2019</i>  <i># 8500.00</i></p> <p><i>still owing.</i>  <i>\$ 29 832.17</i></p>			
<b>Total</b>			\$68,332.17
<b>Payments/Credits</b>			\$0.00
<b>Balance Due</b>			\$68,332.17

Jeff McKeever Plumbing and Contracting

8889 Smith Rd.  
 RR#1, Utopia, Ont.  
 L0M 1T0  
 (705) 734-2297

# Invoice

Date	Invoice #
2018-09-20	1266

Invoice To
Fernwood Developments (Ont) Corp. 5556 5th line. Rockwood, Ont. N0B 2K0

P.O. No.	Terms	Project

Description	Qty	Rate	Amount
1\3 Due on Project Completion of Block #1			
Two end units	1	22,431.08	22,431.08
Five interior units	1	30,585.14	30,585.14
Sump pumps	1	2,000.00	2,000.00
Extra to install 2 frost free bibs complete with tamper proof box.	1	920.00	920.00
Labour	80	85.00	6,800.00
GST On Sales		13.00%	8,155.71
<b>Total</b>			\$70,891.93
<b>Payments/Credits</b>			\$0.00
<b>Balance Due</b>			\$70,891.93

Jeff McKever Plumbing and Contracting

8889 Smith Rd.  
 RR#1, Utopia, Ont.  
 L0M 1T0  
 (705) 734-2297

# Invoice

Date	Invoice #
6/23/2019	1320

Invoice To
Fernwood Developments (Ont) Corp. 5556 5th line. Rockwood, Ont. N0B 2K0

P.O. No.	Terms	Project

Description	Qty	Rate	Amount
Remove poured footings to rough-in plumbing.( 4hrs plus breaker.)	1	330.00	330.00
Labour	2	85.00	170.00
Apr,9, 2018 Repair C.O. on Block # 2	1	67.50	67.50
Labour	0.5	85.00	42.50
May,17,2018 Layouts wrong on Block 2. (4 hrs plus material)	1	330.00	330.00
Labour	2	85.00	170.00
May,28,2018 Repair waterlines from electricians (Block 2 )	1	67.50	67.50
Labour	0.5	85.00	42.50
June,24,2018 Break concrete and move kitchens ( Block 1 and 2)	1	280.00	280.00
Labour	2	85.00	170.00
GST On Sales		13.00%	217.10
<b>Total</b>			\$1,887.10
<b>Payments/Credits</b>			\$0.00
<b>Balance Due</b>			\$1,887.10

Jeff McKeever Plumbing and Contracting

8889 Smith Rd.  
 RR#1, Utopia, Ont.  
 L0M 1T0  
 (705) 734-2297

# Invoice

Date	Invoice #
2019-12-19	1302

Invoice To
Fernwood Developments (Ont) Corp. 5556 5th line. Rockwood, Ont. N0B 2K0

P.O. No.	Terms	Project

Description	Qty	Rate	Amount
1\3 of project due on completion of rough-in of Block #2		0.00	0.00
2- End units	1	22,426.60	22,426.60
5- Interior units	1	37,377.67	37,377.67
Sump pumps	1	2,000.00	2,000.00
Extra to install 2 frost free bibs complete with tamper proof box.	1	920.00	920.00
GST On Sales		13.00%	8,154.16
<b>Total</b>			\$70,878.43
<b>Payments/Credits</b>			\$0.00
<b>Balance Due</b>			\$70,878.43

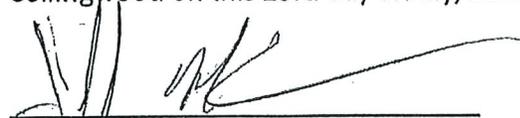


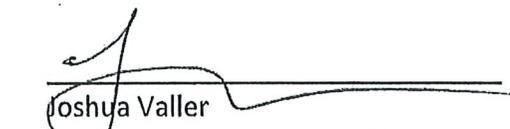
**Statutory Declaration**

I, Jeffery McKeever, do solemnly declare that:

1. I attended at the "Schoolhouse Site" known by the municipal addresses of 250 Penetanguishene Road and 248 Penetanguishene Road in Barrie, Ontario, on February 13, 2020 and installed two glass shower doors in unit 15 of Building #1. I also inspected the sump pump in Building #2 and determined that it was frozen and not working.
2. I, Jeffery McKeever, solemnly declare the facts herein and I make this solemn declaration conscientiously believing it to be true, and knowing that is of the same force and effect as if made under oath.

Declared before me, <sup>Joshua Valler</sup>~~Justin Vanden Ende~~, virtually from the City of Barrie, to the Town of Collingwood on this 23rd day of July, 2020.

  
Jeffery McKeever

  
Joshua Valler  
A Commissioner for taking oaths  
(ISO 707801A)







2.0

DO NOT  
USE FOR  
STAIRS

1/2

