

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

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**2557386 ONTARIO INC. and 2363823 ONTARIO INC.  
o/a MARIMAN HOMES**

Respondents

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

**AFFIDAVIT OF CECIL HAYES**  
(sworn January 16, 2024)

I, **Cecil Hayes**, of the City of Waterloo, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Applicant, MarshallZehr Group Inc. (the “**Lender**”). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by others. When matters deposed to herein are based upon information and advice from others, I believe same to be true.

2. This affidavit is sworn in support of the application by the Lender for the appointment of KSV Restructuring Inc. as receiver (“**Receiver**”) over the property, assets, and undertakings of the Respondents, 2557386 Ontario Inc. (“**255**”) and 2363823 Ontario Inc. o/a Mariman Homes (“**Mariman Homes**”, and together with 255, the “**Respondents**”) and as a supplement to my Affidavit sworn on May 15, 2023.

### **Receivership Application and Settlement**

3. 255 is the registered owner of approximately 70 acres of land in Haldimand, Ontario (the “**Property**”), acquired for the purpose of developing and constructing a development of 66 detached custom estate homes now known as “Grand York Estates”.

4. The hearing of this receivership application was originally scheduled to be heard on May 23, 2023. Shortly prior to the hearing of the receivership application, the Lender and the Respondents engaged in discussions regarding a forbearance agreement. The hearing of the receivership application was adjourned to June 15, 2023 to allow the parties time to negotiate a settlement and a forbearance agreement.

5. The Lender and the Respondents, among others, entered into the Settlement Agreement dated June 5, 2023, a copy of which is attached hereto as **Exhibit “A”** (the “**Settlement Agreement**”). Pursuant to the terms of the Settlement Agreement, the parties agreed, among other things, that:

- (a) the balance of the amounts owing by the Respondents to the Lender will be repaid in full by no later than 2:00 pm on October 30, 2023 (the “**Forbearance Termination Date**”);

- (b) failure to repay the balance owing to the Lender by the Forbearance Termination Date constitutes an Event of Default under the Settlement Agreement;
  - (c) the Respondents consent to the issuance of the receivership order in the form included in the Receivership Application record and attached to the Settlement Agreement as Schedule B (the “**Consent**”); and
  - (d) the Consent may be utilized by the Lender at any time after the occurrence of an Event of Default and the Respondents agree not to contest the appointment of the Receiver on any basis whatsoever and to take no step or action that may in any way delay or interfere with the appointment of the Receiver.
6. On June 15, 2023, the parties attended before Justice Kimmel to advise of the forbearance agreement. Attached hereto as **Exhibit “B”** is a copy of Her Honour’s Endorsement dated June 15, 2023 adjourning the receivership application *sine die*.
7. On October 13, 2023, the Lender received notice that VanRooyen Earthmoving Ltd. (the “**Lien Claimant**”) registered a lien against the Property in the amount of \$1,709,901.54 (the “**Lien**”). A copy of this correspondence is attached hereto as **Exhibit “C”**.
8. On October 30, 2023, the Lien Claimant commenced a claim against 255 and the Lender for recovery of the amounts owing under the Lien. A copy of the Claim is attached hereto as **Exhibit “D”**.
9. The Respondents did not repay the amounts owing to the Lenders by the Forbearance Termination Date or at all. There is no evidence that the Respondents have the ability to repay the amounts owing to the Lender and address the Lien.

10. The Respondents did not file any responding materials to the Lenders' receivership application and have consented to the issuance of the receivership order. In the circumstances it is just and convenient for the Receiver to be appointed.

11. This affidavit is sworn in support of the Lender's application for the appointment of a Receiver and for no other or improper purpose.

**SWORN BEFORE ME** over  
videoconference on this 16<sup>th</sup> day of  
January, 2024. The affiant was located in the  
City of Waterloo and the commissioner was  
located in the City of Toronto, each in the  
Province of Ontario. This affidavit was  
commissioned remotely in accordance O. Reg.  
431/20, Administering Oath or Declaration  
Remotely



---

**Maya Poliak**  
Commissioner for Taking Affidavits  
(or as may be)



---

**CECIL HAYES**



***THIS IS EXHIBIT "A" TO THE  
AFFIDAVIT OF CECIL HAYES  
SWORN BEFORE ME THIS 16<sup>TH</sup>  
DAY OF JANUARY, 2023***

A handwritten signature in black ink, consisting of a stylized 'H' followed by a long horizontal line that curves slightly upwards at the end.

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***A Commissioner Etc.***

## SETTLEMENT AGREEMENT

THIS AGREEMENT made the 5<sup>th</sup> day of June, 2023,

BETWEEN:

**MARSHALLZEHR GROUP INC.**  
("MarshallZehr")

– and –

**2557386 ONTARIO INC.** (the "Debtor")

-and-

**2363823 ONTARIO INC. o/a MARIMAN HOMES** (the "Corporate Guarantor")

-and-

**1000258812 ONTARIO INC.** ("812")

### RECITALS:

- A. Pursuant to a Commitment Letter dated June 23, 2022, as amended, (the "**Commitment Letter**"), MarshallZehr, for a syndicate of lenders (collectively, "**MarshallZehr**"), agreed to provide a loan to the Debtor in the maximum principal amount of \$26,849,000 (the "**Loan**"). MarshallZehr is a lender and the administrator of the Loan.
- B. Pursuant to a joint and several guarantee dated June 30, 2022 (the "**Guarantee**"), the Corporate Guarantor and Michael Bettiol (together with the Corporate Guarantor and the Debtor, the "**Obligors**") jointly and severally guaranteed all of the Debtor's obligations to MarshallZehr.
- B. The Obligors have committed numerous Events of Default under the Commitment Letter and MarshallZehr's security.
- C. On April 6, 2023, MarshallZehr served demands for payment (the "**Demands**") and notices of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) on the Obligors.
- D. On May 12, 2023, MarshallZehr commenced an application bearing Court File No. CV-23-00699432-00CL (the "**Receivership Application**") for the appointment of KSV Restructuring Inc. as receiver of the property, assets and undertakings of the Debtor and the Corporate Guarantor (the "**Receiver**").
- E. On May 30, 2023, MarshallZehr and the Obligors agreed to settle the Receivership Application in accordance with the terms of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), the parties agree as follows:

1. The parties hereto acknowledge and agree that each of the foregoing recitals is true and accurate both in substance and in fact.
2. As of April 4, 2023, the amount owing by the Debtor to MarshallZehr under the Loan is \$15,133,933.65 for principal, interest and fees (excluding legal costs) as detailed in the Demands (the “**Indebtedness**”).
3. The Debtor shall pay to MarshallZehr:
  - (a) \$100,000 by no later than 2:00 pm on June 9, 2023;
  - (b) \$100,000 by no later than 2:00 pm on June 19, 2023;
  - (c) \$300,000 by no later than 2:00 pm on June 30, 2023; and
  - (d) the balance of the Indebtedness by no later than 2:00 pm on October 30, 2023 (the “**Forbearance Termination Date**”).
4. The Debtor agrees to an interest reserve under the Loan effective May 31, 2023 in the amount of \$711,000 (the “**Interest Reserve**”).
5. The Debtor advised MarshallZehr that it does not have the financial resources to establish the Interest Reserve concurrent with the execution of this Agreement. The Obligors and 812 agree that as security for the Interest Reserve, 812 shall grant a collateral charge/mortgage in the principal amount of \$1,000,000 against the property bearing legal description of:

PIN: 38144-0187(LT)

Property Description: PT GRANT TO JAMES DAVIS SENECA BEING PT 1 18R6735;  
SAVE AND EXCEPT PTS 1 & 2 18R6822, PTS 1, 2 & 3 18R6978,  
AND PT 1 18R7367 HALDIMAND COUNTY (the “**Property**”)

on the terms set out in the charge/mortgage attached as **Schedule “A”** to this Agreement (the “**Charge**”).
6. The Debtor and 812 agree that in the event that the Property is sold or refinanced before the Forbearance Termination Date, the proceeds from the sale or refinancing up to the amount of the Charge shall be used first to fund the Interest Reserve in full, which shall be deposited with MarshallZehr, with the balance applied by MarshallZehr to reduce the amount of the Indebtedness.
7. The Obligors and 812 agree to reimburse MarshallZehr in respect of all reasonable expenses (including fees and disbursements at its lawyers’ normal charges) which

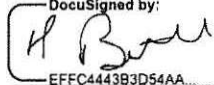
MarshallZehr has incurred or will incur in connection with the review of the Charge, the negotiation and preparation of this Agreement, the administration and the enforcement of the Indebtedness and this Agreement. To the extent that such expenses have not been included in the Indebtedness, MarshallZehr may pay such expenses directly and the amount so paid shall form part of the Indebtedness, shall bear interest from the date of payment at the highest rate payable by the Debtor for any of the Indebtedness to MarshallZehr and shall be secured by the security granted by the Obligors and §12, including the Charge.

8. The Debtor shall pay to MarshallZehr a forbearance fee in the amount of \$150,000 which shall be added to the Indebtedness.
9. Concurrent with the execution of this Agreement, the Debtor and the Corporate Guarantor hereby consent to the issuance of the receivership order in the form included in the Receivership Application record and attached hereto as **Schedule "B"** (the "**Consent**")
10. The following constitute an "**Event of Default**" under this Agreement:
  - (a) Failure to pay any of the amounts owing under this Agreement in accordance with the prescribed timelines; and
  - (b) Failure to comply with any other terms of this Agreement.
11. The Consent may be utilized by MarshallZehr at any time after the occurrence of an Event of Default, acting in MarshallZehr's sole and unfettered discretion. The Borrower and the Corporate Guarantor agree not to contest the appointment of the Receiver on any basis whatsoever. The Borrower and the Corporate Guarantor shall take no step or action that may in any way delay or interfere with the appointment of the Receiver.
12. The Receivership Application shall be adjourned *sine die*. If the Borrower has paid the Indebtedness in full on or before the Forbearance Termination Date, the Receivership Application shall be withdrawn on a without costs basis.
13. This Agreement and all other documents to be executed and delivered pursuant to this Agreement constitute the entire agreement between the parties hereto as to the matters dealt with herein or therein and supersede all prior negotiations, understandings and agreements. Any amendment to this Agreement or waiver of any provision of this Agreement must be in writing and signed by the parties hereto.
14. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
15. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.
16. This Agreement may be signed in counterparts and exchanged via facsimile transmission or e-mail and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the date first above written.

REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**2557386 ONTARIO INC.**

Per:   
Name: Michael Bettiol  
Title: Presid

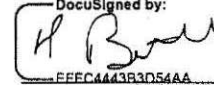
I have authority to bind the corporation.

**2363823 ONTARIO INC. o/a MARIMAN HOMES**

Per:   
Name: Michael Bettiol  
Title: Presid

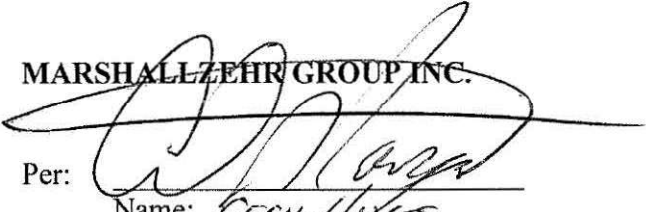
I have authority to bind the corporation.

**1000258812 ONTARIO INC.**

Per:   
Name: Michael Bettiol  
Title: presid

I have authority to bind the corporation.

**MARSHALLZEHR GROUP INC.**

Per:   
Name: CECIL HAYES  
Title: PRESIDENT

I have authority to bind the corporation.

**SCHEDULE "A"**  
**CHARGE/MORTGAGE**

LRO # 18 Charge/Mortgage

In preparation on 2023 05 30 at 16:26

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

**Properties**

*PIN* 38144 - 0187 LT *Interest/Estate* Fee Simple  
*Description* PT GRANT TO JAMES DAVIS SENECA BEING PT 1 18R6735; SAVE AND EXCEPT PTS  
 1 & 2 18R6822, PTS 1, 2 & 3 18R6978, AND PT 1 18R7367; HALDIMAND COUNTY  
*Address* YORK

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* 1000258812 ONTARIO INC.  
 Acting as a company  
*Address for Service* 558 Upper Gage Avenue, Unit 363, Hamilton, Ontario L8V 4J6  
 A person or persons with authority to bind the corporation has/have consented to the registration of this document.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* MARSHALLZEHR GROUP INC.  
 Acting as a company  
*Address for Service* 412 Albert St., Suite 100, Waterloo, Ontario N2L 3V3

**Statements**

Schedule:

**Provisions**

*Principal* \$1,000,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* on demand  
*Interest Rate*  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms*  
*Insurance Amount* Full insurable value  
*Guarantor*



**SCHEDULE "A" – ADDITIONAL PROVISIONS**

**1. COLLATERAL MORTGAGE**

This charge/mortgage of land (the "**Collateral Charge**") is given by 1000258812 Ontario Inc. (the "**Chargor**") as collateral security for the liabilities and obligations of 2557386 Ontario Inc. (the "**Debtor**") to MarshallZehr Group Inc. ("**MZG**") pursuant to the settlement agreement dated May 30, 2023 (the "**Settlement Agreement**") among MZG, the Debtor, the Chargor and 2363823 Ontario Inc., o/a Mariman Homes. The total amount secured by this Collateral Charge shall not exceed the principal sum of One Million (\$1,000,000) Dollars together costs thereon.

**2. DEFAULT**

The Chargor acknowledges and agrees that a default under the Settlement Agreement, the Priority Charge (as hereinafter defined) and/or any of the collateral security granted by the Obligors (as such term is defined in the Settlement Agreement) in connection with the Settlement Agreement shall (i) constitute a default by the Chargor under this Collateral Charge and (ii) entitle MZG to exercise any and all remedies available to it in connection therewith. For clarity, in the event of a default under this Collateral Charge, MZG may, at its option by notice in writing to the Chargor, immediately declare the whole of the outstanding principal hereby secured to be due and payable and exercise all of the remedies available to it under this Collateral Charge, in equity and/or at law. For purposes of this Section, the "**Priority Charge**" means the charge/mortgage of land granted by the Chargor in favour of 1372301 Canada Inc., 2689918 Ontario Inc. and 1000158298 Ontario Inc. on August 19, 2022 against title to the property secured hereby (the "**Property**").

**3. STANDARD CHARGE TERMS**

In the event of any inconsistency between the terms of this schedule to the Collateral Charge and the terms of standard charge terms number 200033, the terms of this schedule to the Collateral Charge shall prevail and the inclusion of any term in standard charge terms number 200033 that is not set out in this schedule to the Collateral Charge shall not be an inconsistency.

**4. DUE ON SALE**

If the Chargor sells, conveys, transfers or enters into any agreement of sale or transfer of the title of the Property and/or any part thereof, without the written consent of MZG, which consent shall not be unreasonably withheld, the balance of the principal then outstanding and all amounts secured by this Collateral Charge shall, at the option of MZG, become immediately due and payable.

**5. NON-MERGER**

Notwithstanding the registration of this Collateral Charge, the Chargor hereby acknowledges that the terms, conditions, obligations, liabilities, warranties and representations contained in the Settlement Agreement shall not merge but shall remain binding and effective upon the parties hereto and in full force effect. It is understood and agreed that any default under the Settlement Agreement shall be deemed a default under this Collateral Charge. In the event of an inconsistency or conflict between any of the terms of this Collateral Charge and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

**6. NO FURTHER CHARGE/ENCUMBRANCE**

In the event that the Chargor further charges, mortgages or encumbers the Property in any way without first obtaining the written consent of MZG, which consent shall not be unreasonably withheld, then at the option of MZG, the balance of the principal then outstanding and all amounts secured by this Collateral Charge shall, at the option of MZG, become immediately due and payable.

**7. APPOINTMENT OF RECEIVER**

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to MZG, then MZG may in writing appoint any person, whether an officer or employee of MZG or not, to be a Receiver of the Property and the rents and profits derived therefrom and may remove the Receiver so appointed and appoint another in his stead. The term "**Receiver**" as used herein includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The Receiver so appointed is conclusively the Chargor's agent and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the Receiver. MZG shall not be responsible in any way for any misconduct or negligence on the part of the Receiver and may, from time to time, fix the remuneration of the Receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by MZG or by the Receiver shall render MZG a mortgagee in possession or responsible as such;

- (c) All monies received by the Receiver, after providing for payment and charges ranking prior to this charge and for all applicable costs shall be applied in or towards satisfaction of the remaining monies payable under MZG;
- (d) The Receiver so appointed shall have the power to:
  - (i) take possession of the Property, collect rents and profits, and realize upon additional or collateral security granted by the Chargor to MZG and for that purpose may take proceedings, be they legal or otherwise in the Chargor's name or otherwise;
  - (ii) carry on or occur in carrying on the business which the Chargor is conducting on and from the Property, and for that purpose borrow money on the security of the Property in priority to this Collateral Charge; and
  - (iii) lease all or any portion of the Property and for this purpose execute contracts in the Chargor's name which said contracts shall be binding upon the Chargor.

**SCHEDULE "B"**  
**CONSENT TO RECEIVERSHIP ORDER**

Court File No. CV- 23-00699432-00CL

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

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

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**2557386 ONTARIO INC. and 2363823 ONTARIO INC. o/a MARIMAN HOMES**

Respondents

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

**CONSENT**

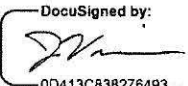
The Respondents, by their solicitors duly authorized, hereby consent to the form and contents of the draft order attached hereto as Schedule "A" and confirm that no person or party to these proceedings is under any legal disability.

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of May, 2023  
6/5/2023

**2557386 ONTARIO INC.**  
by its solicitors Jennifer Vrancic

Per:   
DocuSigned by:  
0D413C838276493...  
SCARFONE HAWKINS LLP

**2363823 ONTARIO INC.**  
by its solicitors Jennifer Vrancic

Per:   
DocuSigned by:  
0D413C838276493...  
SCARFONE HAWKINS LLP

SCHEDULE "A"

Court File No. CV-23-00699432-00CL

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

THE HONOURABLE M \_\_\_\_\_ )  
JUSTICE )  
 )  
DAY OF \_\_\_\_\_, 2023

B E T W E E N:

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- and -

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**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 KSV Restructuring Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc., o/a Mariman Homes

(collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

**ON READING** the affidavit of Cecil Hayes sworn May 15, 2023 and the Exhibits thereto, and on reading the consent of KSV Restructuring Inc. to act as the Receiver and the consent of the Respondents to this Order,

**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 application 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, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

**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 Debtors, 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 Debtors;
- (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 Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;

- (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 Debtors, 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 Debtors, 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 \$100,000, 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 Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors 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 Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (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 Debtors, 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 DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors 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 Debtors 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 Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, 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 Debtors 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 Debtors 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 Debtors' 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 Debtors 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 Debtors, 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 \$100,000 (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 "B" 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 COUNSEL**

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 Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “<https://www.ksvadvisory.com/experience/case/grand-York-estates>”.

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 Debtors’ creditors or other interested parties at their respective addresses as

last shown on the records of the Debtors 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 Debtors' 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 Debtors.

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 application, 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 Applicant from the Debtors' 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.

35. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

**SCHEDULE "A"**

**Property owned by 2557386 Ontario Inc.**

**Municipal Address:** 30 Front Street, Haldimand, Ontario

**PIN:** 38148-0128 (LT)

**Property Description:** PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN HC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY

**Property owned by 2363823 Ontario Inc.**

**Municipal Address:** 178 Moores Road, Haldimand, Ontario

**PIN:** 38147-0005 (LT)

**Property Description:** PT LT 19 CON 4 SE STONEY CREEK RD SENECA AS IN HC68736; HALDIMAND COUNTY

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the • day of May, 2023 (the "**Order**") made in an application having Court file number CV-23-00699432-00CL, 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 \_\_\_\_\_, 202\_\_.

**KSV RESTRUCTURING INC.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**MARSHALLZEHR GROUP INC.**  
Applicant

-and-

2557386 ONTARIO INC., et al.  
Respondents

Court File No. CV-23-00699432-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**  
(Appointing Receiver)

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

**Maya Poliak (54100A)**  
Tel: (416) 218-1161  
E-mail: maya@chaitons.com

**Lawyers for the Applicant**



***THIS IS EXHIBIT "B" TO THE  
AFFIDAVIT OF CECIL HAYES  
SWORN BEFORE ME THIS 16<sup>TH</sup>  
DAY OF JANUARY, 2023***

A handwritten signature in black ink, consisting of a stylized 'H' followed by a long horizontal line that curves slightly upwards at the end.

---

***A Commissioner Etc.***



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00699432-00CL DATE: 15 June 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **MARSHALLZHER GROUP INC. v. 2557386 ONTARIO INC  
AND 2363823 ONTARIO INC.**

**KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Laura Culleton	MarshallZehr Group Inc.	laura@chaitons.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Jennifer Vrancic	2557386 Ontario Inc. and 2363823 Ontario Inc.	jvrancic@shlaw.ca

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE KIMMEL:**

1. Since this application was originally returnable on May 23, 2023, the parties have been working on a forbearance agreement. The matter has been adjourned a few times. The parties made good use of that time and advised the court today that a forbearance agreement has been agreed to.
2. One of the terms of the forbearance agreement is that the debtors have consented to the appointment of a receiver in the event of their default under that agreement.
3. On consent, this receivership application is adjourned *sine die*.

A handwritten signature in cursive script that reads "Kimmel J." The signature is written in dark ink and is positioned above the printed name.

KIMMEL J.

***THIS IS EXHIBIT "C" TO THE  
AFFIDAVIT OF CECIL HAYES  
SWORN BEFORE ME THIS 16<sup>TH</sup>  
DAY OF JANUARY, 2023***

A handwritten signature in black ink, consisting of a stylized 'H' followed by a long horizontal line that curves slightly upwards at the end.

---

***A Commissioner Etc.***

File No. 880780

Email: dan.mackeigan@siskinds.com  
Delivered by: Mail

October 13, 2023

MarshallZehr Group Inc.  
412 Albert St., Suite 100,  
Waterloo, ON N2L 3V3

Dear Sir/Madame:

**Re: Construction Lien against Grand York Estates Development, Haldimand County  
PIN 38148-0128 (LT)  
Borrower: 2557386 Ontario Inc.**

We are the lawyers for VanRooyen Earthmoving Ltd. Our client has registered a construction lien against the above-noted property, a copy of which is enclosed for your records.

Pursuant to section 39 of the *Construction Act*, we require the following information within 21 days:

1. Sufficient details concerning the mortgage to determine whether the mortgage was taken for the purpose of refinancing the improvement; and
2. A statement showing the amounts advanced under the mortgage, the dates of the advances and any arrears in payment, including arrears in the payment of interest.

We look forward to your prompt response.

Yours truly,

Siskinds LLP

Per:

  
Daniel J. MacKeigan

DJM  
Enclosure

**Direct**  
Phone: 519.660.7852  
Fax: 519.660.7853

**Direct Toll Free**  
Phone: 1.877.672.2121

**Head Office**  
Phone: 519.672.2121  
Fax: 519.672.6065

**Properties**

PIN 38148 - 0128 LT  
 Description PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN HC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY  
 Address YORK

**Consideration**

Consideration \$1,709,901.54

**Claimant(s)**

Name VANROOYEN EARTHMOVING LTD.  
 Address for Service c/o Daniel J. MacKeigan  
 Siskinds LLP  
 275 Dundas Street, Unit 1  
 London, ON N6B 3L1

I, Jarend VanRooyen, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

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

**Statements**

Name and Address of Owner 2557386 Ontario Inc., 314 Rexford Drive, Hamilton, ON L8W 1P5. Name and address of person to whom lien claimant supplied services or materials See Schedule. Time within which services or materials were supplied from 2023/04/14 to 2023/06/26 Short description of services or materials that have been supplied Erosion and sediment control fencing, topsoil stripping and stockpiling, site grading (Cut/Fill). Contract price or subcontract price \$1,906,175.42 Amount claimed as owing in respect of services or materials that have been supplied \$1,709,901.54

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: See Schedules

**Signed By**

Heather Ann Pearce Unit 1 - 275 Dundas Street acting for Signed 2023 08 16  
 London Applicant(s)  
 N6B 3L1

Tel 519-672-2121

Fax 519-672-6065

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

**Submitted By**

SISKINDS LLP Unit 1 - 275 Dundas Street 2023 08 17  
 London  
 N6B 3L1

Tel 519-672-2121

Fax 519-672-6065

**Fees/Taxes/Payment**

Statutory Registration Fee \$69.00

Total Paid \$69.00

## Schedule

Name and address of person to whom lien claimant supplied services or materials:

1. 2557386 Ontario Inc.  
314 Rexford Drive  
Hamilton, ON L8W 1P5
2. 2363823 Ontario Inc. o/a Mariman Homes  
558 Upper Gage Avenue, 363  
Hamilton, ON L8V 4J6

***THIS IS EXHIBIT "D" TO THE  
AFFIDAVIT OF CECIL HAYES  
SWORN BEFORE ME THIS 16<sup>TH</sup>  
DAY OF JANUARY, 2023***

A handwritten signature in black ink, consisting of a stylized 'H' followed by a long horizontal line that curves slightly upwards at the end.

---

***A Commissioner Etc.***





Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
IN THE MATTER of the *Construction Act*, RSO 1990, c. C.30, as amended

B E T W E E N :

VANROOYEN EARTHMOVING LTD.

Plaintiff

- and -

2557386 ONTARIO INC. and MARSHALLZEHR GROUP INC.

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

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 \$2,500.00 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 \$400.00 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: October 30, 2023

Issued by \_\_\_\_\_  
Local registrar

Address of court office 55 Munsee St. N.,  
Cayuga, ON N0A 1E0

TO: 2557386 Ontario Inc.  
314 Rexford Drive  
Hamilton, ON L8W 1P5

AND TO: MarshallZehr Group Inc.  
412 Albert St., Suite 100  
Waterloo, ON N2L 3V3

## CLAIM

1. The plaintiff claims:
  - (a) Damages in the amount of \$1,709,901.54;
  - (b) A declaration that the Plaintiff's claim for lien, registered against the title to the lands and premises described in Schedule "A" herein, and bearing instrument number CH128011 on August 17, 2023, in the Land Registry Office for the Land Titles Division of Haldimand (No. 18) ("**Claim for Lien**"), is a valid claim for lien;
  - (c) An order that in default of payment by the defendants, or any of them, of \$1,709,901.54, plus interest and costs, all the estate and interest of the defendants in the lands described in the Property be sold and the proceeds applied toward payment of the plaintiff's claim as under the *Construction Act*, R.S.O. 1990, c. C.30, as amended;
  - (d) Priority over the full mortgage of the defendant, MarshallZehr Group Inc., or, in the alternative, any one or more of the following:
    - (i) priority over the mortgage for any deficiency in the holdbacks required to be retained by the owner;
    - (ii) priority over the mortgage to the extent of any unadvanced portions thereof;
    - (iii) priority over the mortgage to the extent of any advance made when there was a preserved or perfected lien against the lands and

premises described in **Schedule “A”**, or after receipt of written notice of a lien; and/or

- (iv) if the mortgage is a prior mortgage under the *Construction Act*, priority over the mortgage if any portion advanced exceeded the actual value of the premises when the first lien arose;
- (e) For the purposes aforesaid and for all other purposes, that all proper directions be given, enquiries made and accounts taken;
- (f) Pre-judgment and post-judgment interest at the rates prescribed by the *Courts of Justice Act*, RSO 1990, c. C.43 as amended;
- (g) Costs of this action on a substantial indemnity basis; and
- (h) Such further and other relief as this Honourable Court deems just.

### **The Parties**

2. The plaintiff, VanRooyen Earthmoving Ltd. (the “**Contractor**”) is an Ontario corporation with its head office located in Woodstock, Ontario.
3. The defendant, 2557386 Ontario Inc. (the “**Owner**”) is an Ontario corporation with its head office located in Hamilton, Ontario, and the registered owners of the lands which are subject of the Claim for Lien, such lands and premises being more particularly described in Schedule "A" attached hereto (the “**Property**”).
4. The defendant, MarshallZehr Group Inc. (“**MarshallZehr**”), is an Ontario corporation with its head office in Waterloo, Ontario. MarshallZehr holds a mortgage on the Property.

### **The Contract and Work**

5. On or about October 27, 2022, the Owner contracted the Contractor, to perform site preparation and grading (the “**Contract**”) to the project referred to as Grand York Estates, in Haldimand County (the “**Project**”). The Contract price was \$1,906,175.42.
6. The Contractor provided its labour and materials to the Property between April 14, 2023, and June 26, 2023.
7. The Contractor submitted the following invoices for progress payments in accordance with the Contract and work performed (the “**Invoices**”):
  - (a) Invoice No. 2749, dated May 1, 2023, in the amount of \$279,553.06;
  - (b) Invoice No. 2768, dated June 5, 2023, in the amount of \$814,609.37; and
  - (c) Invoice No. 2795, dated July 5, 2023, in the amount of \$444,748.95.
8. Progress payments for each of the Invoices has been approved by the project administrator/payment certifier.
9. On or about June 9, 2023, the Contractor was provided two cheques, each post-dated to June 12, 2023, which purported to make payment of Invoice Nos. 2749 and 2768.
10. On or about September 13, 2023, the Contractor attempted to deposit the cheques. On or about September 15, 2023, the cheque for payment of Invoice No. 2749 was returned due to stopped payment, and the cheque for payment of Invoice No. 2768 was returned due to insufficient funds.
11. The Owner has failed, neglected, or refused to pay the Invoices.

12. The sum owing from the Owner to the Contractor pursuant to the Invoices, plus holdback, in the amount of \$170,990.15, previously deducted from the Invoices, is \$1,709,901.54.
13. The Contractor is not aware if holdbacks as defined in the *Construction Act* were held or maintained by the defendants.

#### **The Plaintiff's Construction Lien**

14. By providing its labour, services, supplies and materials to the Property, the Contractor became and is entitled to a construction lien against the interests of the defendants, in the amount of \$1,709,901.54, under the *Construction Act*.
15. On August 17, 2023, the Contractor registered its Claim for Lien. A copy is attached as Schedule "B" to this Statement of Claim.
16. The services and materials supplied by the Contractor were furnished on behalf of, upon the credit of, for the direct benefit of and the privity and consent of the Owner, and that the estate and interest of the defendants are subject to the Claim for Lien.

#### **The Mortgage to MarshallZehr**

17. On June 30, 2022, a mortgage in favour of MarshallZehr for \$35,000,000.00 was registered as Instrument No. CH118769 (the "**Mortgage**") against the Property. The Contractor submits that the Mortgage was taken by MarshallZehr to secure the financing of improvements to the Property and/or the Project. The Contractor's Claim for Lien has priority over the Mortgage to the extent:

- (a) of any deficiencies in the holdback required to be retained under the *Construction Act*;
- (b) that any advances under the Mortgage exceeded the actual value of the Property when the Claim for Lien arose; and
- (c) that any advances under the Mortgage were made after MarshallZehr had notice of the Claim for Lien.

### **Damages**

- 18. The Owner breached the Contract by failing, neglecting, or refusing to pay the Contractor the amounts owing under the Contract and Invoices in the amount of \$1,709,901.54.
- 19. The Owner requested that the Contractor provide the services and materials to the Project including any changes to scope, scheduling, extra work, among other changes, and accepted the services and materials knowing they were not rendered gratuitously.
- 20. Further, or in the alternative, the Owner has been unjustly enriched by the value of the services and materials supplied by the Contractor, in the amount of \$1,709,901.54, to the detriment of the Contractor, for which there is no juristic reason. The Contractor relies upon the doctrine of unjust enrichment and/or *quantum meruit* and/or *quantum valebant*.
- 21. The Contractor proposes that this action be tried in Cayuga, Ontario.

October 30, 2023

Siskinds LLP  
275 Dundas Street, Unit 1  
London, ON N6B 3L1

Daniel J. MacKeigan LSO#: 42564R  
dan.mackeigan@siskinds.com  
Tel: 519-660-7852

Lawyers for the Plaintiff



**Schedule “A”**

**Legal Description of the Property:**

*PIN:* 38148 - 0128LT

*Description:* PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS INHC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY

*Address:* YORK

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

yyyy mm dd Page 1 of 2

**Properties**

*PIN* 38148 - 0128 LT  
*Description* PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE &  
EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN  
HC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY  
*Address* YORK

**Consideration**

*Consideration* \$1,709,901.54

**Claimant(s)**

*Name* VANROOYEN EARTHMOVING LTD.  
*Address for Service* c/o Daniel J. MacKeigan  
Siskinds LLP  
275 Dundas Street, Unit 1  
London, ON N6B 3L1

I, Jarend VanRooyen, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

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

**Statements**

Name and Address of Owner 2557386 Ontario Inc., 314 Rexford Drive, Hamilton, ON L8W 1P5. Name and address of person to whom lien claimant supplied services or materials See Schedule. Time within which services or materials were supplied from 2023/04/14 to 2023/06/26 Short description of services or materials that have been supplied Erosion and sediment control fencing, topsoil stripping and stockpiling, site grading (Cut/Fill). Contract price or subcontract price \$1,906,175.42 Amount claimed as owing in respect of services or materials that have been supplied \$1,709,901.54

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: See Schedules

**Signed By**

Heather Ann Pearce Unit 1 - 275 Dundas Street acting for Signed 2023 08 16  
London Applicant(s)  
N6B 3L1

Tel 519-672-2121

Fax 519-672-6065

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

**Submitted By**

SISKINDS LLP Unit 1 - 275 Dundas Street 2023 08 17  
London  
N6B 3L1

Tel 519-672-2121

Fax 519-672-6065

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$69.00

*Total Paid* \$69.00

### **Schedule**

Name and address of person to whom lien claimant supplied services or materials:

1. 2557386 Ontario Inc.  
314 Rexford Drive  
Hamilton, ON L8W 1P5
  
2. 2363823 Ontario Inc. o/a Mariman Homes  
558 Upper Gage Avenue, 363  
Hamilton, ON L8V 4J6

~~YANCOFFER PARTNERSHIP LTD.~~

Plaintiff and

2557560 ONTARIO INC., et al  
Defendants

Court File No.:

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

Proceeding commenced at CAYUGA

**STATEMENT OF CLAIM**

Siskinds LLP  
275 Dundas Street, Unit 1  
London, ON N6B 3L1

Daniel J. MacKeigan LSO#: 42564R  
dan.mackeigan@siskinds.com  
Tel: 519-660-7852

Lawyers for the Plaintiff

Our File No. 880780

MARSHALLZEHR GROUP INC.  
Applicant

-and-

2557386 ONTARIO INC., et al.  
Respondents

Court File No. CV- 23-00699432-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF CECIL HAYES  
(sworn January 16, 2024)**

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

**Maya Poliak** (54100A)  
Tel: (416) 218-1161  
E-mail: maya@chaitons.com

**Lawyers for the Applicant**