

**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

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED; AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C. 43, AS AMENDED**

**AIDE-MEMOIRE OF THE RECEIVER, KSV RESTRUCTURING INC.**

(Respondents' motion returnable November 12, 2024)

November 11, 2024

**RECONSTRUCT LLP**

Richmond-Adelaide Centre  
120 Adelaide Street West, Suite 2500  
Toronto, ON M5H 1T1

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Fax: 416.613.8290

**Independent Counsel for KSV  
Restructuring Inc.**

1. This is a motion by the debtors, 2557386 Ontario Inc. and 2362823 Ontario Inc. o/a Mariman Homes (the “**Debtors**”), for a further extension to the effective date of the Approval and Vesting Order granted by Justice Black on October 1, 2024 (“**AVO**”), as set out in the Distribution and Discharge Order of that date (“**Discharge Order**”).
2. KSV Restructuring Inc. (“**KSV**”) as court-appointed receiver (the “**Receiver**”) opposes the relief sought on this motion. Due to the increased time and expense this motion and the Receiver’s dealings with the Debtors’ counsel has caused, the Receiver and its counsel also respectfully request an increase in the approved fee accruals.

### **Relevant Background**

3. On December 5, 2023, the Home Construction Regulatory Authority (“**HCRA**”) immediately suspended the builder’s licence of the Debtors’ principal, Mike Bettiol, so that Mr. Bettiol and the Debtors could not build or sell new homes until they had satisfied the terms of a resolution agreement with HCRA (the “**Resolution Agreement**”). The Resolution Agreement required the Debtors to demonstrate to the HCRA that they could construct the homes in various projects, including the Grand York Estates Property development project (the “**York Property**”), in the time and at the price promised to the prospective homebuyers and account for the millions of dollars of deposits that were to have been held in trust. A copy of the Resolution Agreement was attached as Appendix “B” to the Supplement to the Third Report of the Receiver and is attached for convenience at **Tab A**.
4. On January 16, 2024, KSV was appointed by the Court as Receiver over the Debtors’ assets, undertaking and property on the application of the Debtors’ principal York Property creditor, MarshallZehr Group Inc. (“**MZ**”). The Debtors consented to the Receiver’s appointment.
5. On July 31, 2024, HCRA fully revoked the Debtors’ building licence because Mr. Bettiol failed to provide information and was thus unable to satisfy the terms of the Resolution Agreement. The HCRA found that there were no grounds to believe that the Debtors could reasonably be expected to be financially responsible in the conduct of their business, nor did they demonstrate that the business would be carried on in accordance with the law and with integrity and honesty. A copy of the decision was attached as Appendix “C” to

the Supplement to the Third Report of the Receiver and is attached for convenience at **Tab B**.

6. From April through to August 2024, the Receiver conducted a thorough sales process for the York Property, with the result that the only viable prospect of selling the York Property was through a credit bid by one of MZ's affiliates, as set out in an agreement of purchase and sale dated August 6, 2024. Mr. Bettiol did not participate in this process.
7. The Receiver moved for court approval of the sale and KSV's subsequent discharge on October 1, 2024. At the hearing, counsel for the Debtors explained that Mr. Bettiol had been working to secure last-minute financing to redeem the Debtors' interest in the York Property and continue building.<sup>1</sup> The Receiver and MZ consented to allow the Debtors until November 12, 2024 to redeem the York Property, with the AVO to otherwise be effective on the following day. These terms are captured in the Discharge Order.<sup>2</sup>
8. The Receiver's consent was premised on the Debtors having almost secured refinancing from the first proposed lender, CO Capital LTD, which has now failed to close, without explanation.<sup>3</sup> The Debtors now purport to seek a further and much longer extension to pursue fresh financing with another lender and without an independent Tarion-certified builder.<sup>4</sup>

### **The Receiver's opposition to the Debtors' motion**

9. The Receiver has three reasons to oppose the relief sought by the Debtors on this motion: (1) the financing terms as proposed are highly conditional and not capable of performance—or if so, not with adequate certainty; (2) the proposed method of arranging for construction appears to be different from what had been promised to homebuyers and would be prejudicial to them; and (3) MZ, the Debtors' principal economic stakeholder, owed more than the \$16.5 million purchase price in the transaction for which the AVO was granted, does not support an extension of the date for the AVO to become effective.

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<sup>1</sup> Affidavit of Michael Bettiol sworn November 10, 2024 ("**Bettiol Affidavit**"), paragraphs 56-59, Motion Record of the Debtors **[MR]** Tab 2, p [0022](#).

<sup>2</sup> Distribution and Discharge Order dated October 1, 2024.

<sup>3</sup> Bettiol Affidavit, paras 47-55, and Exhibits P and Q, MR Tab 2, 2P and 2Q, pp [0020-0021](#), [0244](#) and [0246](#).

<sup>4</sup> Bettiol Affidavit, [para 60](#) indicates that under the previous refinancing, the Debtors had entered into an agreement with a "Tarion Certified Builder." This element has not been carried forward into the new refinancing proposal, as described below.

### **The financing terms**

10. The proposed financing by DBNC Group Inc.—a party with no apparent historical relationship to the York Property and also not a participant in the sale process—is, among other things: a) conditional on a valuation of the York Property at more than 73% loan to value ratio for the amounts to be loaned (i.e., which is referenced to be approximately \$28.6 million),<sup>5</sup> on which there is no information, and b) entirely contingent on the financing of a separate property owned by the lender.<sup>6</sup>
11. The Debtors assert (hope) that the proposed refinancing will be able to be closed by December 30, 2024.<sup>7</sup> Given that this date falls within the Christmas to New Year’s holiday season and given that it is only seven weeks from this hearing, the Receiver questions whether the closing date is feasible, if at all.

### **The proposed construction without HCRA or Tarion registration**

12. The Receiver also has concerns about the implication of the Debtors’ proposal not to engage in HCRA or Tarion registration.
13. The Debtors do not suggest that Mr. Bettiol is continuing to seek reinstatement or appeal of the HCRA’s licence revocation decision. Instead, the Debtors suggest that they may continue to build at the York Property by way of a work-around. In the letter from Burokas Law to Mr. Bettiol dated November 7, 2024 (the “**Opinion Letter**”), counsel advised that the Debtors could use a construction management agreement (“**CMA**”) to develop the York Property *without requiring HCRA licensure*.<sup>8</sup>
14. This strategy would avoid the *New Home Construction Licensing Act (NHCLA)* requirements and warranty enrollment from the Tarion Warranty Corporation (**Tarion**) under the *Ontario New Home Warranties Plan Act (ONWHPA)* by designating each home within the York Property as being developed by an “owner-builder,” as the *NHCLA* and *ONWHPA* obligations only apply to vendors and builders, but not to individual owners. The Opinion Letter explains that a “properly executed [CMA] involves a consumer acting as an ‘owner-builder’ in constructing their own home on their own land for their own personal

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<sup>5</sup> Commitment Letter dated November 8, 2024 (“**CL**”), Bettiol Affidavit, Exhibit T, MR Tab 2T, p [0277](#).

<sup>6</sup> CL, Bettiol Affidavit, Exhibit T, MR Tab 2T, p [0275](#).

<sup>7</sup> CL, Bettiol Affidavit, MR Tab 2T, p [0274](#).

<sup>8</sup> Letter from Michael Burokas dated November 7, 2024, Bettiol Affidavit, Exhibit U, MR Tab 2U, pp [0309-0311](#).

use and occupation. The construction manager [i.e., Mr. Bettiol] simply assists the owner-builder in the construction of their own home as a consultant and agent,” which means there is no “builder” or “vendor” answerable to the duties set out in the *NHCLA* or *ONWHPA*. The Opinion Letter notes that the construction manager’s responsibility is to support owner-builders, but that the construction manager’s efforts cannot extend to being in control of the build or move into the territory of being a builder and vendor.<sup>9</sup>

15. Although this may have the potential to result in the new homes being built, the Receiver has concerns on behalf of the homebuyers that those homes would not be eligible for Tarion warranty coverage. The prospective York Property homebuyers did not bargain to become owner-builders when they provided deposits to the Debtors for the York Property. It is unknown whether they will be willing and able to assume the responsibility conferred on them by a CMA; there is no evidence that these homebuyers have seen a proposed CMA or a revised purchase agreement, or received independent legal advice on these points.<sup>10</sup> No alternative insurance has been suggested to protect the homebuyers.

#### **Unclear legal test but established factual issues**

16. The Receiver has not yet received any written argument from the Debtors, so it is not known whether they seek a variation of the October 1, 2024 order pursuant to Rule 59.06(2) or otherwise on general equitable principles.
17. The problems noted above point to factual issues against relief in both cases. The proposed new financing is conditional in significant respects and the proposed method of working around the HCRA and Tarion issues that the Debtors previously faced raises issues and appears to materially prejudice the would-be homebuyers.
18. The time for redemption—as specifically negotiated before the October 1, 2024 hearing and incorporated in the Distribution and Discharge Order of that date—has passed; the Receiver respectfully submits that in the circumstances the AVO should be permitted to enter into effect as of November 13, 2024.

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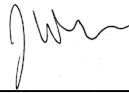
<sup>9</sup> *Ibid.*

<sup>10</sup> Bettiol Affidavit, paras 76-81, MR, Tab 2, p [0026](#).

**Further fee accrual requested**

19. The Receiver further respectfully submits that the approved fee accruals for this matter be increased from \$125,000 to \$165,000 (plus disbursements and HST), on account of the increased costs for responding to this urgent motion and the communications with the Debtors leading up to it. This increase will only permit the payment of fees actually incurred, and will remain subject to the oversight of MZ, as funder of the transaction contemplated in the AVO by which those fees would be paid.

All of which is respectfully submitted.



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**Reconstruct LLP**  
**Independent counsel for KSV Restructuring Inc.**  
**in its capacity as Receiver**

**MARSHALLZEHR GROUP INC.**

**2557386 ONTARIO INC. et al.**  
Respondents

Applicant

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

Proceedings commenced at Toronto

**AIDE-MEMOIRE OF THE RECEIVER,  
KSV RESTRUCTURING INC.**  
(returnable November 12, 2024)

**RECONSTRUCT LLP**  
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Fax: 416.613.8290

**Independent Counsel to the Receiver, KSV  
Restructuring Inc.**

TAB A



Home Construction Regulatory Authority  
40 Sheppard Avenue West, Fourth Floor, Suite 400  
Toronto, ON M2N 6K9  
Tel: 416-487-HCRA (4272) Fax: 416-352-7724

December 5, 2023

Delivered by email to: [michael@burokaslaw.ca](mailto:michael@burokaslaw.ca)

To: 2363823 Ontario Inc.  
c/o Michael Burokas  
197 Spadina Ave. 4th Floor,  
Toronto, ON M5T 2C8

Attention: 2363823 Ontario Inc.

## **Re: NOTICE OF PROPOSAL TO SUSPEND A LICENCE**

The Home Construction Regulatory Authority (“HCRA”) proposes to suspend the licence of 2363823 ONTARIO INC. pursuant to section 40(2) of the New Home Construction Licensing Act, 2017 (“NHCLA”).<sup>1</sup> Pursuant to section 45(1) of the NHCLA, the HCRA orders that this suspension takes effect immediately.

### **A. REASONS**

#### **Summary**

1. The HCRA has received multiple complaints regarding 2363823 Ontario Inc. o/a Mariman Homes’ (“236”) conduct. Following a lengthy inspection, the HCRA discovered, among other things, that 236 had entered into agreements of purchase and sale for 108 homes without proper authorization.
2. In order to minimize harm to the purchasers of these 108 homes, the HCRA is suspending 236’s licence until such time as it demonstrates to the HCRA that it has obtained proper authorization to build and sell these homes. Further, 236 must demonstrate to the HCRA that it can construct these homes in the time period and at the price promised to these consumers.
3. Given the scope of these infractions and the possible harm to consumers, the HCRA believes it is in the public interest to immediately suspend 236’s licence.

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<sup>1</sup> *New Home Construction Licensing Act, 2017*, SO 2017, c 33, Sched 1, available online here: [www.ontario.ca/laws/statute/17n33#BK44](http://www.ontario.ca/laws/statute/17n33#BK44).



Home Construction Regulatory Authority  
40 Sheppard Avenue West, Fourth Floor, Suite 400  
Toronto, ON M2N 6K9  
Tel: 416-487-HCRA (4272) Fax: 416-352-7724

### **The Parties**

4. The HCRA regulates new home vendors and builders in accordance with the NHCLA and with the principle of promoting the protection of the public interest.
5. Part of the HCRA's oversight function includes considering concerns raised about applicants and licensees and taking appropriate action to protect the public as authorized by the NHCLA.
6. 236 has been a licensed vendor/builder since December 5, 2013. Michael Bettiol and Angela Bettiol are listed as Directors of the corporation. 236 operates using the name Mariman Homes. 236 is licensed under the Marimat Homes group of related companies.

### **Particulars**

#### *Failure to Enrol*

7. Between December 2016 and April 2022, 236 has entered into agreements to sell 108 new homes in Ontario. Pursuant to the terms and conditions of 236's Tarion Registration, which subsequently became conditions of its HCRA licence, 236 was only permitted to build or sell 7 homes.
8. Further, most of these new homes have not been enrolled in the warranty program with Tarion. 64 of these homes were sold after February 1, 2021. As a result, 236 was required to complete the qualification for enrolment process as required by the Ontario New Home Warranties Plan Act.
9. 236 admits that it failed to complete the qualification for enrolment process on the homes sold after February 1, 2021.
10. One purpose of the Qualification for Enrollment and Terms and Conditions processes are to ensure that a licensee has the qualifications, capacity, and financing to be able to complete the number of homes they are authorized to build and/or sell. Since 236 has not complied with these requirements, the HCRA cannot assume at this time that 236 is capable of delivering on its promises to consumers.
11. As a result of the above, 236's licence ought to be suspended until it can demonstrate to the HCRA that it has complied with all of its legal obligations and that it has the capability of fulfilling its obligations to consumers.

### **Grounds for the Proposal**

12. Under section 38(1)(b)(iii) of the NHCLA, in the Registrar's opinion, it has not been demonstrated at this time that the past and present conduct of 236's officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty.
13. Under section 38(1)(g) of the NHCLA, granting a licence to 236 is contrary to the public interest at this time.

### **Conclusion**

14. For the reasons stated above, and further to the mandate of the HCRA under section 3(3) of the NHCLA to maintain a fair, safe and informed marketplace and promote the protection of the public interest, the Registrar maintains that it is in the public interest to immediately suspend 236's licence until it is satisfied of the forgoing issues.

### **Amended or Additional Reasons or Particulars**

15. The Registrar may serve amended or additional reasons or particulars of conduct or financial position.

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Home Construction Regulatory Authority  
40 Sheppard Avenue West, Fourth Floor, Suite 400  
Toronto, ON M2N 6K9  
Tel: 416-487-HCRA (4272) Fax: 416-352-7724

## **B. RIGHT TO A HEARING**

**If you dispute this decision, you have the right to request a hearing before the Licence Appeal Tribunal (“Tribunal”) about this proposal.**

**To request a hearing, you must deliver a Notice of Appeal form within 15 calendar days after this Notice of Proposal is delivered to you, addressed to the following:**

Licence Appeal Tribunal  
PO Box 250  
Toronto, ON M7A 1N3  
LATregistrar@ontario.ca  
Phone: 416-326-1356  
Toll free: 1-888-444-0240  
TTY: Call the Bell Relay Service at 1-800-855-0511

**AND**

The Registrar  
Home Construction Regulatory Authority  
40 Sheppard Ave West, 4th Floor, Suite 400  
Toronto, Ontario M2N 6K9  
Legal@hcraontario.ca

### **IMPORTANT NOTE:**

**This is an immediate suspension order. Your Licence has been suspended. You are prohibited from acting or holding yourself out as a vendor or builder, offering to sell or transfer a new home, selling or transferring a new home, offering to construct a new home, or constructing a new home until the suspension is lifted.**

**Failure to abide by this suspension order could result in further regulatory action including but not limited to charges, administrative penalties, and/or restraining orders.**

The Notice of Appeal form and other information about hearings may be found on the Tribunal’s website at <https://slasto-tsapno.gov.on.ca/lat-tamp/en/>.

When an applicant or licensee delivers a Notice of Appeal form within the timeline set out above, a legal proceeding before the Tribunal will commence. The Tribunal may direct



Home Construction Regulatory Authority  
40 Sheppard Avenue West, Fourth Floor, Suite 400  
Toronto, ON M2N 6K9  
Tel: 416-487-HCRA (4272) Fax: 416-352-7724

the Registrar to carry out the proposal or may substitute its opinion. The Tribunal may also attach conditions to its order or to a licence.

The HCRA cannot advise you about the appeal process. If you dispute this decision, you have the right to retain a lawyer or paralegal to represent you.


Information about this proposal will be reported publicly on the HCRA website <https://www.hcraontario.ca/> and the Ontario Builder Directory <https://obd.hcraontario.ca/>.

### **Contact Information**

If you have any questions about the reasons for the Proposal or wish to discuss this matter with the HCRA, please contact [Legal@hcraontario.ca](mailto:Legal@hcraontario.ca). If you have any questions about the appeal process or timelines, please contact the Tribunal at:

Licence Appeal Tribunal  
PO Box 250  
Toronto, ON M7A 1N3  
[LATregistrar@ontario.ca](mailto:LATregistrar@ontario.ca)  
Phone: 416-326-1356  
Toll free: 1-888-444-0240  
TTY: Call the Bell Relay Service at 1-800-855-0511

Dated at Toronto this 5<sup>th</sup> day of December, 2023.

  
[Wendy Moir \(Dec 5, 2023 16:18 EST\)](#)  
Wendy Moir  
Registrar, HCRA

TAB B



Home Construction Regulatory Authority  
40 Sheppard Avenue West, Fourth Floor, Suite 400  
Toronto, ON M2N 6K9  
Tel: 416-487-HCRA (4272) Fax: 416-352-7724

July 31, 2024

Delivered by email to: mvininsky@ksvadvisory.com

2363823 Ontario Inc.  
c/o KSV Advisory  
220 Bay Street, 13th Floor, PO Box 20,  
Toronto, Ontario, M5J 2W4

## **Re: NOTICE OF PROPOSAL TO REVOKE A LICENCE**

**The Home Construction Regulatory Authority (“HCRA”) proposes to revoke the licence of 2363823 ONTARIO INC. pursuant to section 40(2) of the New Home Construction Licensing Act, 2017 (“NHCLA”).**

### **REASONS**

#### **Summary**

1. The HCRA received multiple complaints regarding 2363823 Ontario Inc. o/a Mariman Homes’ (“Mariman”) conduct. Following a lengthy inspection, the HCRA discovered, among other things, that Mariman had entered into agreements of purchase and sale for 108 homes without proper authorization.
2. In order to minimize harm to the purchasers of these 108 homes, the HCRA entered into a resolution agreement with Mariman to allow it an opportunity to come into compliance and complete the 108 homes. The HCRA suspended Mariman’s licence so that it could not build or sell new homes until it had satisfied the terms of the resolution agreement; namely, that Mariman could demonstrate to the HCRA that it could construct these homes in the time period and at the price promised to these consumers.
3. Mariman has been unable to satisfy the terms of the resolution agreement. As a result, pursuant to that agreement, the HCRA is revoking Mariman’s licence effective immediately.
4. Since Mariman is subject to receivership proceedings, the HCRA was required to seek the Receiver’s consent to these proceedings. On July 17, 2024, the Receiver provided this consent.



Home Construction Regulatory Authority  
40 Sheppard Avenue West, Fourth Floor, Suite 400  
Toronto, ON M2N 6K9  
Tel: 416-487-HCRA (4272) Fax: 416-352-7724

### **The Parties**

5. The HCRA regulates new home vendors and builders in accordance with the NHCLA and with the principle of promoting the protection of the public interest.
6. Mariman has been a licensed vendor/builder since December 5, 2013. Michael Bettiol and Angela Bettiol are listed as Directors of the corporation. Mariman operates using the name Mariman Homes. Mariman is licensed under the Marimat Homes group of related companies.

### **Particulars**

7. Between December 2016 and April 2022, Mariman entered into agreements to sell 108 new homes in Ontario. Pursuant to the terms and conditions of Mariman's Tarion Warranty Corporation Registration, which subsequently became conditions of its HCRA licence, Mariman was only permitted to build or sell 7 homes.
8. Most of these new homes have not been enrolled in the warranty program with Tarion. 64 of these homes were sold after February 1, 2021. As a result, Mariman was required to complete the qualification for enrolment process set out in the *Ontario New Home Warranties Plan Act*. Mariman acknowledged that it failed to do so.
9. In addition to failing to enrol the new homes that it sold, Mariman failed to hold the deposits it received in trust.
10. As part of its purchase agreements, the purchasers agreed to provide deposits and Mariman agreed to hold the funds in its trust account. Mariman had collected approximately \$15,152,362.50 in deposit funds.
11. On March 1, 2023, in response to an HCRA inspection, Mariman provided a redacted print out of its trust account statements. These statements showed that, as of February 6, 2023, the account only held \$1,140,814.79 leaving an unexplained shortfall of \$14,011,547.70.
12. Mariman acknowledged that it did not hold the deposits in trust but claims to have used the funds to finance construction of other homes.
13. Mariman was provided a time limited opportunity to replenish the trust funds and prove that it had the capacity, capability, and financing to build these homes. Mariman did not provide any information to the HCRA during this time period. Instead, Mariman was petitioned into receivership by one of its lenders. The HCRA obtained the Receiver's consent prior to initiating this revocation.



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40 Sheppard Avenue West, Fourth Floor, Suite 400  
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Tel: 416-487-HCRA (4272) Fax: 416-352-7724

14. Since it has failed to satisfy the terms of the resolution agreement, the HCRA is immediately revoking Mariman's licence.

#### **Grounds for the Proposal**

15. Under section 38(1)(b)(i) of the NHCLA, in the Registrar's opinion, it has not been demonstrated that Mariman, having regard to its past and present financial position, can reasonably be expected to be financially responsible in the conduct of its business.
16. Under section 38(1)(b)(iii) of the NHCLA, in the Registrar's opinion, it has not been demonstrated at this time that the past and present conduct of Mariman's officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty.
17. Under section 38(1)(g) of the NHCLA, granting a licence to Mariman is contrary to the public interest at this time.

#### **Conclusion**

18. For the reasons stated above, and further to the mandate of the HCRA under section 3(3) of the NHCLA to maintain a fair, safe and informed marketplace and promote the protection of the public interest, the Registrar is immediately revoking Mariman's licence.


#### **Amended or Additional Reasons or Particulars**

19. The Registrar may serve amended or additional reasons or particulars of conduct or financial position.

#### **Contact Information**

If you have any questions about the reasons for the Proposal or wish to discuss this matter with the HCRA, please contact [Legal@hcraontario.ca](mailto:Legal@hcraontario.ca).

Dated at Toronto this 31<sup>st</sup> day of July, 2024.

  
Wendy Moir  
Wendy Moir (Jul 31, 2024 16:44 EDT)  
Wendy Moir  
Registrar, HCRA

**MARSHALLZEHR GROUP INC.**

**2557386 ONTARIO INC. et al.**  
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(returnable November 12, 2024)

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Richmond-Adelaide Centre  
120 Adelaide Street West, Suite 2500  
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