



**Report of
KSV Kofman Inc.
as Proposed Receiver of Certain Property of
Generx (Byward Hall) Inc.**

June 13, 2017

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

APPLICANT

- AND -

GENERX (BYWARD HALL) INC.

RESPONDENT

**REPORT OF
KSV KOFMAN INC.
AS PROPOSED RECEIVER**

JUNE 13, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as proposed receiver of the real property ("Real Property") registered on title as being owned by Generx (Byward Hall) Inc.¹ (the "Company") and of all of the Company's assets, undertakings and properties acquired for or used in relation to the Real Property (together with the Real Property, the "Property"). KSV has consented to act as receiver of the Property. A copy of KSV's consent is attached as Appendix "A".
2. The principal purpose of the proposed receivership proceedings is to conduct a sale process for the Property under the supervision of a Court-appointed receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information on the proposed receivership proceedings;
 - b) summarize a recommended process pursuant to which the Property is to be marketed for sale, including the retention of SVN Rock Advisory Inc. ("SVN") to act as listing agent ("Sale Process");

¹ Formerly known as Textbook (256 Rideau Street) Inc.

- c) summarize the terms under which KSV proposes to borrow up to \$200,000 under Receiver Certificates (the “Receiver’s Borrowings”) from KingSett Mortgage Corporation (“KingSett”), which has two mortgages on the Real Property totalling \$8.25 million, before interest, fees and costs that continue to accrue; and
- d) recommend that the Court issue an order:
 - approving the Sale Process;
 - approving the terms of the Receiver’s Borrowings; and
 - sealing the confidential appendix.

2.0 Background

1. The Company purchased the Real Property in November, 2015 for \$11 million. The municipal addresses of the Real Property are 256 Rideau Street and 211 Besserer Street, Ottawa, Ontario. The Real Property is vacant land. The Company intended to develop student housing residences on the Real Property.
2. The Company’s officers and directors are John Davies (“Davies”) and Walter Thompson (“Thompson”).
3. In addition to KingSett’s mortgages, there are two construction liens registered on title to the Real Property totalling approximately \$906,000.

2.1 Trustee Corporations and Davies Developers’ Proceedings

1. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Limited was appointed Trustee (“Trustee”) of eleven entities² which raised monies from investors through syndicated mortgage investments (collectively, the “Trustee Corporations”). Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements (“Loan Agreements”) between a Trustee Corporation and the Receivership Companies (as defined below) and four other related entities (collectively, the “Davies Developers”).

² Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

2. Pursuant to an order made by the Court on February 2, 2017, as amended by orders made on April 28, 2017 and May 2, 2017, KSV was appointed receiver and manager of the real property registered on title as being owned by, and of all of the assets, undertakings and properties acquired for or used in relation to the real property of, Scollard Development Corporation (“Scollard”), Memory Care Investments (Kitchener) Ltd. (“Kitchener”), Memory Care Investments (Oakville) Ltd. (“Oakville”), 1703858 Ontario Inc. (“Burlington”), Legacy Lane Investments Ltd. (“Legacy Lane”), Textbook (555 Princess Street) Inc. (“555 Princess”) and Textbook (525 Princess Street) Inc. (“525 Princess” and collectively with the other entities, the “Receivership Companies”).
3. Davies is the sole director and officer of Scollard, Kitchener, Oakville, Burlington and Legacy Lane. Thompson and Davies are the sole directors and officers of 555 Princess and 525 Princess.
4. As set out in KSV’s Third Report to Court dated May 16, 2017 in its capacity as receiver and manager of certain property of the Receivership Companies (the “Third Report”), 555 Princess, Kitchener and Burlington transferred \$3.7 million to the Company in contravention of the provisions of the Loan Agreements entered into by 555 Princess, Kitchener and Burlington. The monies appear to have been advanced in connection with the Company’s purchase of the Real Property. A copy of the Third Report is attached as Appendix “B”, without appendices.
5. On May 17, 2017, KSV brought an *ex parte* motion for an order permitting it to register a Certificate of Pending Litigation (“CPL”) on title to the Real Property. On May 17, 2017, the Court granted the order (the “May 17th Order”) and the CPL was registered on title shortly thereafter. A copy of the May 17th Order is attached as Appendix “C”.
6. As of the date of this Report, no party has contested the making of the May 17th Order nor any aspect of the Third Report.
7. At the time of the May 17th Order, KingSett was in the process of commencing a sale of the Real Property as it had:
 - a) made written demand for payment on the Company of the full amount outstanding under its mortgages and served a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, and
 - b) served a Notice of Sale under Mortgage pursuant to the *Mortgages Act*, R.S.O. 1990, c. M.40, with a deadline date for payment of April 19, 2017.
8. Due to the complexity resulting from the Davies Developers’ insolvency proceedings and the filing of the CPL, KingSett determined that it is appropriate that the Real Property be sold in a Court-supervised process.
9. The appointment of KSV as the receiver of the Property will result in efficiencies for the benefit of all creditors due to its knowledge of the business and affairs of the Davies Developers.

10. In the event that there is a priority dispute between KSV, as receiver, in respect of the claims underlying the CPL and KingSett's security, KSV would appoint a claims officer to resolve the dispute - KSV would not determine the priority issue as it would find itself in a conflict position. KSV does not, however, believe there is a priority issue between KingSett's mortgages and the claims underlying the CPL as KingSett's mortgages appear to rank in priority to those claims. Additionally, KSV's legal counsel, Bennett Jones LLP, has provided KSV with an opinion confirming the validity and enforceability of KingSett's mortgages, subject to standard qualifications and assumptions.
11. If appointed receiver, KSV intends to forthwith vacate the CPL and dismiss the related action as the actions will no longer be required since the Real Property will be sold pursuant to a Court supervised sale process under its direction, and no proceeds will be distributed without the approval of KSV and the Court.

3.0 Sales Process

1. KSV recommends that SVN be retained as the listing agent. SVN has extensive experience selling student housing projects and is familiar with the Real Property and the intended project. SVN sold the Real Property to the Company. SVN and KSV have agreed to the commission structure provided in the listing agreement ("Listing Agreement") and KingSett has consented to it. The commission payable to SVN increases with the value of the transaction, creating alignment between SVN and the Company's creditors. The commission rates reflect the complexity of selling the Real Property.
2. The Listing Agreement includes a carve-out for certain transactions for which SVN would not earn a commission, including a redemption of KingSett's security. Additionally, SVN would not earn a commission on a transaction that was recently presented to KingSett by one of the Company's principals.
3. A copy of the Listing Agreement, redacted for SVN's commission structure, is attached as Appendix "D". An unredacted version of the Listing Agreement is attached as Confidential Appendix "1". KSV proposes to file the unredacted Listing Agreement on a sealed basis for the reasons provided below.

3.1 Confidentiality

1. KSV respectfully requests that the unredacted Listing Agreement be filed with the Court on a confidential basis and be sealed ("Sealing Order") as it contains confidential information, including the commission structure. If these documents are not sealed, the information in these documents may negatively impact realizations on the Real Property. KSV is not aware of any party that will be prejudiced if the information is sealed. KSV believes the proposed Sealing Order is appropriate in the circumstances.

3.2 Sale Process

1. The recommended Sale Process is summarized in the table below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	➤ SVN to review all available documents concerning the Real Property, including environmental reports and planning and development reports.	Week 1
Finalize marketing materials	➤ SVN and KSV to: <ul style="list-style-type: none"> ○ prepare a development summary; ○ populate an online data room; ○ prepare a confidentiality agreement (“CA”); and ○ prepare a Confidential Information Memorandum (“CIM”). 	
Prospect Identification	➤ SVN to develop a master prospect list. SVN will qualify and prioritize prospects. ➤ SVN will also have pre-marketing discussions with targeted developers.	
<i>Phase 2 – Marketing</i>		
Stage 1	➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ offering summary and marketing materials printed; ○ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition); ○ telephone and email canvass of leading prospects; and ○ meet with and interview bidders. 	Weeks 2-3
Stage 2	➤ SVN to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room; ➤ SVN to facilitate all diligence by interested parties; ➤ SVN will canvass the market and then determine a bid date in conjunction with KSV; and ➤ KSV will prepare a Vendor’s form of Purchase and Sale Agreement (“PSA”)	Week 4 - TBD
Stage 3	➤ Prospective purchasers to submit PSAs or other proposals.	TBD

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 3 – Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> ➤ Proposal short listing and approval ➤ 2nd Round Bids - Prospective purchasers may be asked to re-submit PSAs 	TBD
Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	TBD
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Motion for sale approval and close transaction 	TBD

2. The table reflects that the bid date has not yet been determined. It is intended that after SVN completes its initial marketing efforts (anticipated to be around the end of the fourth week of the Sale Process), KSV would establish the deadline for submitting offers.
3. Additional attributes of the Sale Process include:
 - a) the Property will be marketed on an “as is, where is” basis;
 - b) KSV will have the right to reject any and all offers, including the highest offer;
 - c) if the highest and best offer received does not generate proceeds sufficient to repay KingSett in full, and KingSett does not consent to the proposed transaction, KSV will terminate the Sale Process. KingSett will then have the option to credit bid its debt to purchase the Property. If this occurs, provided the highest and best offer provided by SVN was a closeable offer (“Closeable Offer”), SVN will still be entitled to the commission it would have generated from the Closeable Offer; and
 - d) any transaction will be subject to Court-approval.

3.3 Sale Process Recommendation

1. KSV recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) SVN’s team has experience selling student housing projects and its commission is structured to incentivize it to maximize recoveries;
 - b) the Sale Process is a fair, open and transparent process intended to canvass the market broadly on an orderly (non-fire sale) basis in order to obtain the highest and best price;

- c) there will be no delay commencing the process – SVN is familiar with the Real Property and the intended project;
 - d) the Sale Process is flexible and will allow KSV to set the bid date and establish such other procedures it believes necessary to maximize value; and
 - e) KingSett has consented to the Sale Process.
2. Based on the foregoing, KSV believes that the terms of the Listing Agreement are reasonable in the circumstances. KSV recommends the Court approve the Sale Process and the retention of SVN as listing agent.

4.0 Receiver's Borrowings

1. KingSett has advised KSV that it is prepared to fund the receivership proceedings under Receiver's Certificates.
2. A summary of the key terms of the KingSett facility is as follows:
 - a) Amount: up to \$200,000;
 - b) Term: one year;
 - c) Repayment: any time, with three business days written notice to the Lender;
 - d) Interest rate: 11.5% per annum, compounded monthly;
 - e) Commitment fee: 2% of the total facility (\$4,000). Given the size of the facility, the commitment fee is immaterial;
 - f) Draws and Security: funds are to be advanced by way of Receiver's Certificates. Advances are to be secured by way of a Court-ordered charge on the Property which charge shall only be subordinate to the Receiver's Charge;
 - g) Subsequent Loans: in the event the Receiver seeks a subsequent loan, the receiver will first offer the opportunity to KingSett; and
 - h) Conditions: the only condition is that the Court approve the Commitment Letter and make the proposed receivership order.
3. KingSett's commitment letter had not been executed at the time this Report was finalized. A copy of the commitment letter will be available for the Court on the return of the application should it wish to see it.

4.1 Recommendation re Receiver's Borrowings

1. KSV considered the following factors regarding the terms of the Receiver's Borrowings:
 - a) it will provide KSV with liquidity to fund these proceedings (KSV has advised KingSett that additional borrowings may be required depending on the duration of the Sale Process); and
 - b) KSV is of the view that the terms of the facility are consistent with other recent real estate restructurings in which it is involved (including those involving the Receivership Companies). If the Court approves the terms of the Receiver's Borrowings, KSV does not intend to solicit other financing proposals. In this regard, given the small size of the facility, the fees incurred running such a process would exceed the savings, if any, achieved by that process.
2. Based on the foregoing, KSV believes that the terms of the KingSett facility are reasonable in the circumstances.

5.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(d) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
IN ITS CAPACITY AS PROPOSED RECEIVER OF
GENERX (BYWARD HALL) INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Court File No.

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

GENERX (BYWARD HALL) INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

CONSENT

KSV Kofman Inc. hereby consents to act as the Receiver in the above-noted matter.

DATED this 12th day of June, 2017.

KSV KOFMAN INC.

Per: _____

Name: Robert Kofman

Title: President

and

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

Proceeding commenced at Toronto

CONSENT TO ACT AS RECEIVER

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Appendix “B”



**Third Report of
KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

May 16, 2017

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COURT FILE NO: CV-17-11689-00CL

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO 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

**THIRD REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER**

MAY 16, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property ("Real Property") registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (525 Princess Street) Inc. ("525 Princess") and Textbook (555 Princess Street) Inc. ("555 Princess") (each of the foregoing a "Company", and collectively the "Companies"), and of all of the assets, undertakings and properties of the Companies acquired for or used in relation to the Real Property (together with the Real Property, the "Property").

2. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Ltd. was appointed Trustee (“Trustee”) of eleven entities¹ (collectively, the “Trustee Corporations”) which raised monies from investors through syndicated mortgage investments. The Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporation and the applicable Davies Developer (as defined below).
3. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 525 Princess and 555 Princess, as well as all of the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the “Amended and Restated Receivership Order”); and
 - b) compelling John Davies and the eleven mortgagors to the Trustee Corporations for which John Davies is a principal (collectively, the “Davies Developers” and each a “Davies Developer”) to immediately deliver to the Trustee all bank statements for the Davies Developers (the “Production Order”). The Trustee has provided the Receiver with copies of the documents produced to the Trustee pursuant to the Production Order.
5. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order. The Amended and Restated Receivership Order was further amended and restated by a Court order made on May 2, 2017 to rectify certain clerical errors.

1.1 Restrictions

1. In preparing this Report, the Receiver has reviewed the following information:
 - a) unaudited financial information of the Companies, including financial statements;
 - b) accounting records and bank statements for Scollard, Kitchener, Oakville, Burlington, Legacy Lane, 525 Princess, 555 Princess, which were provided to the Receiver by management of the Companies; and

¹ Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

- c) bank statements for Textbook Ross Park Inc. (“Ross Park”), Textbook (445 Princess Street) Inc. (“445 Princess”) and Textbook (774 Bronson Avenue) Inc. (“Bronson”)², which were provided by management of the Davies Developers to the Trustee pursuant to the Production Order, and which were provided subsequently by the Trustee to the Receiver.
2. The Receiver has not performed an audit of the foregoing information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver is only partially through its review of the information noted above. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
3. The Receiver does not have access to the books and records of Rideau.
4. The Receiver has not discussed or corresponded with John Davies or Walter Thompson regarding this Report, including in respect of its findings.

2.0 Rideau Property

1. Textbook (256 Rideau Street) Inc. (“Rideau”) is neither subject to these receivership proceedings nor is it a Davies Developer.
2. Rideau is the registered owner of real properties municipally described as 256 Rideau Street, Ottawa and 211 Besserer Street, Ottawa (jointly, the “Ottawa Property”).
3. The officers and directors of Rideau are John Davies and Walter Thompson, who are also the sole officers and directors of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park. John Davies is the sole officer and director of Kitchener, Burlington, Oakville, Scollard and Legacy Lane. Corporate profile reports for each of these entities are provided in Appendix “A”.
4. As the Receiver has not been able to review the books and records of Rideau, the Receiver does not have knowledge of the ownership structure of Rideau.

2.1 Purchase of the Property

1. According to title searches, the Ottawa Property was purchased by Rideau for \$11 million on or around November 6, 2015. Kingsett Mortgage Corporation has two mortgages totalling \$8.25 million registered on title to the Ottawa Property. The mortgages were registered on title on November 6, 2015. Copies of the title searches for the Ottawa Property are collectively attached as Appendix “B”.

² None of these entities is subject to the receivership proceedings.

2. The Receiver is performing a review of the receipts and disbursements for each of the Companies. In performing this exercise, the Receiver identified that on October 27, 2015, shortly prior to Rideau's acquisition of the Ottawa Property, 555 Princess transferred \$1.39 million to Rideau, and Kitchener transferred \$111,000 to Rideau, both by way of cheque.³
3. In addition, the Trustee has advised the Receiver that on October 27, 2015, Ross Park⁴ transferred \$1.25 million to Rideau by way of cheque. The Receiver has reviewed the Ross Park bank statements and cancelled cheque and has confirmed this payment.
4. In all cases, the cheques were signed by John Davies. A copy of the relevant bank statements and cancelled cheques for 555 Princess, Kitchener and Ross Park are provided in Appendix "C".
5. As the Receiver has not been able to review the books and records of Rideau, the Receiver cannot know with certainty the use of the funds which were transferred to Rideau on October 27, 2015. As is described below, however, the timing and amount of the transfer causes the Receiver to suspect that the funds transferred to Rideau were used to help finance the acquisition of the Ottawa Property.

2.2 Other Payments to Rideau

1. The Receiver has also identified that \$61,200 was transferred to Rideau by 555 Princess, 525 Princess and Burlington subsequent to Rideau's acquisition of the Ottawa Property, as follows:

(unaudited; \$)	
Date of Payment	Amount
<i>555 Princess</i>	
December 17, 2015	36,000
May 31, 2016	7,000
	43,000
<i>525 Princess</i>	
June 20, 2016	16,000
<i>Burlington</i>	
November 5, 2015 ⁵	2,200
Total	61,200

³ These transfers (and the subsequent transfers by certain of the Companies referred to below) were recorded in the applicable Companies' general ledger as "loans" to Textbook Student Suites Inc. or Textbook Suites Inc. (or just "Textbook" in the case of Kitchener), notwithstanding that the funds appear to have been transferred from the applicable entity directly to Rideau.

⁴ Ross Park is not subject to these receivership proceedings, as noted above.

⁵ Payment made on the date the Ottawa Property was purchased. This payment is reflected in Burlington's bank statement as an "online banking payment". No details are provided in the bank statement regarding the recipient. Burlington's general ledger reflects that this payment was made to Rideau.

2. Copies of the relevant bank statements and cancelled cheques for each of the payments in the table above are provided in Appendix "D".
3. The Trustee has advised the Receiver that \$839,700 was transferred to Rideau by 445 Princess, Bronson and Ross Park subsequent to the acquisition of the Ottawa Property, as follows:

(unaudited; \$)	
Date of Payment	Amount
<i>445 Princess</i>	
July 27, 2016	35,000
August 3, 2016	37,000
August 4, 2016	5,000
August 16, 2016	33,000
August 25, 2016	370,000
August 26, 2016	60,000
September 1, 2016	3,000
September 7, 2016	21,000
September 15, 2016	2,600
September 22, 2016	2,000
September 29, 2016	61,000
September 30, 2016	8,000
October 12, 2016	2,300
October 12, 2016	30,000
October 28, 2016	61,000
November 3, 2016	33,000
December 13, 2016	2,600
	766,500
<i>Bronson</i>	
April 1, 2016	30,000
April 29, 2016	25,000
May 2, 2016	1,200
	56,200
<i>Ross Park</i>	
February 29, 2016	17,000
Total	839,700

4. The Receiver has reviewed the bank statements and cancelled cheques in respect of the foregoing. Copies of the relevant bank statements and cancelled cheques for the payments in the table above are provided in Appendix "E".

5. Pursuant to Section 7.02 (g) of the loan agreements referred to above entered into by the Companies, 445 Princess, Bronson and Ross Park with the various Trustee Corporations in connection with the syndicated mortgage investments (the "Loan Agreements"), the Companies, 445 Princess, Bronson and Ross Park each covenanted not to use the loan proceeds from the Trustee Corporations for any purpose other than the development and construction of such entity's respective real estate project, with certain limited carve-outs⁶ provided in certain of the Loan Agreements. One such carve-out is "for the purposes of earning interest income on funds which are not immediately required to be expended by the Borrower." The Receiver has reviewed the income statements provided to it by the relevant Companies, and notes that there has been no interest received or accrued with respect to the transfers to Rideau. The Receiver has also not seen any other document or information to suggest interest was payable on such transfers. Copies of each of the Loan Agreements are provided in Appendix "F".
6. The Receiver has not corresponded or discussed with John Davies or Walter Thompson the purpose of the above transfers; Mr. Davies could potentially provide an explanation for such transfers. However, the Receiver can think of no commercial or legitimate purpose for the transfers in violation of the covenants.
7. In discussions with a realtor on May 10, 2017 in connection with the Receiver's intention to market the Real Property, the realtor advised the Receiver that it had recently been contacted in respect of a potential engagement to sell the Ottawa Property.
8. Based on the information presented in this Report, and after discussions with counsel, the Receiver believes it and the Trustee have a proprietary interest in the Ottawa Property, and the Receiver is commencing an action against Rideau to assert its proprietary interest in the Ottawa Property and seek certificates of pending litigation and related relief.

3.0 Conclusion

1. In order to take steps to protect the interests of the Receiver, 555 Princess, Kitchener and the other entities noted herein that advanced funds to Rideau in contravention of the express provisions of the Loan Agreements, the Receiver believes that it is appropriate that the Court issue an order authorizing the Receiver to file certificates of pending litigation on title to the Ottawa Property. Such relief is particularly important and time sensitive given the Receiver's understanding that the Ottawa Property is being (or is about to be) marketed for sale.

⁶ In addition to the carve-out set out above, Section 7.02 (g) of certain of the Loan Agreements provide an additional carve-out for any other use specified in the Loan Agreements. The Receiver and its counsel have reviewed each of the Loan Agreements and does not believe the transfers are permitted by any other sections of the Loan Agreements.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “C”

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

THE HONOURABLE
MR. JUSTICE MYERS

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WEDNESDAY, THE 17th
DAY OF MAY, 2017

B E T W E E N:

**KSV KOFMAN INC. IN ITS CAPACITY AS RECEIVER AND MANAGER
OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT
CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER)
LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858
ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK
(525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS
STREET) INC.**

Plaintiff

- and -

TEXTBOOK (256 RIDEAU STREET) INC.

Defendant



**ORDER
(Certificates of Pending Litigation)**

THIS MOTION, made without notice by the plaintiff, KSV Kofman Inc. (“**KSV**”) solely in its capacity as Receiver and Manager of certain property of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc. and Textbook (555 Princess Street) Inc. and not in its personal capacity or in any other capacity, pursuant to section 103 of the *Courts of Justice Act* and Rule 42 of the *Rules of Civil Procedure*, for certificates of pending litigation and related relief, was heard this day.

ON READING the materials filed by the plaintiff, including the Notice of Motion, the third report of KSV dated May 16, 2017 and the appendices thereto, the factum, and the brief of authorities of the plaintiff,

1. **THIS COURT ORDERS** that the Registrar shall issue Certificates of Pending Litigation on and as against title to:

(a) the real property municipally described as 256 Rideau Street, Ottawa, Ontario, which is legally described under PIN 04210-0004 (LT) as LT 7, PL 6 , S OF RIDEAU ST, S/T & T/W CR180805; OTTAWA; and

(b) the real property municipally described as 211 Besserer Street, Ottawa, Ontario, which is legally described under PIN 04210-0009 (LT) as PCL 7-1, SEC 6; LT 7, PL 6, PART 1 - 3, 4R919, N OF BESSERER; OTTAWA;

2. **THIS COURT FURTHER ORDERS** that the plaintiff is hereby granted leave to register this Order and the Certificates of Pending Litigation against title to the properties described in paragraph 1 above.

3. **THIS COURT FURTHER ORDERS** that this Order shall remain in full force and effect until further Order of this Court. In the event the defendant brings a motion to remove the Certificates of Pending Litigation, it may move for such relief on not less than seven days' notice to the plaintiff.

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

MAY 17 2017

PER / PAR:


A. Anissimova
Registrar

**KSV KOFMAN INC. in its capacity as Receiver and Manager of
Certain Property of Scollard Development Corporation, et al.**
Plaintiff

v.

TEXTBOOK (256 RIDEAU STREET) INC.

Defendant

Court File No: CV-17-11805-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Certificates of Pending Litigation)**

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Lawyers for the Plaintiff

Appendix “D”

Listing Agreement
 Authority to Offer for Sale



EXCLUSIVE

This is a Multiple Listing Service® Agreement

OR Exclusive Listing Agreement

(Seller's initials)

BETWEEN:

BROKERAGE:

See "Rider to Listing Agreement"

(the "Listing Brokerage") Tel.No. (.....)

SELLER(S):

(the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as

(the "Property")

the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,

commencing at 12:01 a.m. on the See "Rider to Listing Agreement" day of 20.....
 until 11:59 p.m. on the day of 20..... (the "Listing Period").

Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if a MLS® listing may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act (2002), if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.

(Seller's initials)

to offer the property for sale at a price of:

Dollars (CDNS) 1000

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Listing Agreement ("Authority" or "Agreement"), "Seller" includes vendor, a "buyer" includes a purchaser, or a prospective purchaser and a "real estate board" includes a real estate association. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of% of the sale price of the Property or See "Rider to Listing Agreement"

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement. Such other terms and conditions as the Seller may accept, subject to the terms and conditions set out in the Listing Agreement. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or

anyone on the Seller's behalf within See "Rider to Listing Agreement" days after the expiration of the Listing Period (Holdover Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission. All amounts set out as commission are to be paid plus applicable taxes on such commission.

3 REPRESENTATION: The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerages) and to offer to pay

the co-operating brokerage a commission of% of the sale price of the Property or See "Rider to Listing Agreement"

..... out of the commission the Seller pays the Listing Brokerage.

INITIALS OF LISTING BROKERAGE:

(Handwritten initials)

INITIALS OF SELLER(S):

(Handwritten initials)

The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage listing other properties that may be similar to the Seller's Property without any claim by the Seller of conflict of interest. The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the property. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage, said commission to be disbursed in accordance with the Commission Trust Agreement.

MULTIPLE REPRESENTATION: The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practicable opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understands and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

- 4. FINDERS FEE:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
- 5. REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.
- 6. MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.
- 7. WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
- 8. INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. *unless same would be a breach of its duties in the Seller's absolute discretion*
The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying data form. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.
- 9. FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided
- 10. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.
- 11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the

INITIALS OF LISTING BROKERAGE: 

INITIALS OF SELLER(S): 



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database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may, during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("Information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling



Does



Does Not

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

- 12. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 13. CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.
- 14. ELECTRONIC COMMUNICATION:** This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.
- 15. SCHEDULE(S):** See "Refer to Listing Agreement" and data form attached hereto form(s) part of this Agreement.

THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.

Derek Lobo
 (Authorized to bind the Listing Brokerage)

DATE 06/12/2017 DEREK LOBO
 (Name of Person Signing)

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME AND I ACKNOWLEDGE THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

[Signature]
 (Signature of Seller)

DATE June 13, 2017 (Seal) (Tel. No.)

DATE..... (Seal)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the listing of the Property here in pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees that he/she will execute all necessary or incidental documents to further any transaction provided for herein.

DATE..... (Seal) (Spouse)

DECLARATION OF INSURANCE

The broker/salesperson DEREK LOBO (Name of Broker/Salesperson)
 hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.
[Signature]
 (Signature(s) of Broker/Salesperson)

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a true copy of this Agreement on the 13th day of June, 2017

[Signature] Date: JUNE 13, 2017
 (Signature of Seller)

DATE..... (Signature of Seller)

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Schedule "A"

Re: Listing Agreement (the "Agreement") for 256 Rideau Street and 211 Besserer Street in the city of Ottawa, Ontario (the "Properties") between SVN ROCK ADVISORS INC. (the "Listing Brokerage") and KSV KOFMAN INC. ("KSV" or the "Seller"), without personal or corporate liability and solely in its capacity as proposed Court-appointed receiver of the Properties owned by Generx (Byward Hall) Inc. f/k/a Textbook (256 Rideau Street) Inc. ("Rideau") and all of the assets, undertakings and properties of Rideau acquired for or used in relation to the Properties.

Notwithstanding anything contained in the Agreement, each of Listing Brokerage, and the Seller acknowledges and agrees as follows:

1. **Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) KSV is not appointed the receiver and manager of the Properties (b) the Court order appointing the Seller and/or the Seller's appointment as receiver and manager of the Properties owned by Rideau is revoked, overturned on appeal, suspended or terminated; and/or (c) the Seller is restricted in or enjoined from dealing with the Properties by a court of competent jurisdiction; and/or (d) any of the mortgagees of the Properties are permitted by Court order to enforce their rights and/or remedies against the Properties.
2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Properties, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Properties are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of any of the Properties unless and until the sale of such Properties has been completed and the applicable Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).
3. **Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Properties by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Properties as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period.

If the Listing Brokerage had introduced up to a maximum of two (2) different prospective *bona fide* purchasers to the Seller during the Listing Period (each being a "Serious Prospect") and said Serious Prospect had entered into material negotiations with the Seller to purchase the Properties, but said material negotiations had not resulted in a binding agreement of purchase and sale, to the extent that each of the Listing Brokerage and the Seller agree in writing to designate said prospective purchaser as a Serious Prospect prior to the expiration of the Listing Period, and so long as the Seller is not prohibited from doing so, and provided that the New Agent has agreed to forego its fee should a sale to a Serious Prospect be completed, the Listing Brokerage shall be entitled to its commission in connection with the transaction being completed with the Serious Prospect upon terms and conditions acceptable to the Seller in their sole and absolute discretion, which transaction must be subject to Court approval and a binding and unconditional agreement of purchase and sale executed by each of the parties thereto prior to the expiration of the Holdover Period.

During the Holdover Period, the Listing Brokerage will not be entitled to any commission, payment or fee as the Seller's agent if the Listing Team represents the purchaser.



4. **Listing Brokerage's Duties.** The Listing Brokerage covenants and agrees with the Seller to:

- (a) pursuant to the Seller's instructions as outlined below, list the Properties for sale on an un-priced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));
- (b) if instructed by the Seller, offer each of the Properties for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market each of the Properties for sale and use commercially reasonable efforts to sell the Properties pursuant to the following process:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 - Underwriting</i>		
Due diligence	<ul style="list-style-type: none"> ➤ Listing Brokerage to review all available documents concerning the Properties, including environmental reports and planning and development reports 	Weeks 1 to 3
Finalize marketing materials	<ul style="list-style-type: none"> ➤ Listing Brokerage and the Seller to: <ul style="list-style-type: none"> ○ prepare a development summary; ○ populate an online data room; ○ prepare a confidentiality agreement ("CA"); and ○ prepare a Confidential Information Memorandum ("CIM") 	
Prospect Identification	<ul style="list-style-type: none"> ➤ Listing Brokerage to develop a master prospect list. Listing Brokerage will qualify and prioritize prospects. ➤ Listing Brokerage will also have pre-marketing discussions with targeted developers 	
<i>Phase 2 - Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Offering summary and marketing materials printed ○ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition) ○ telephone and email canvass of leading prospects ○ meet with and interview bidders 	Weeks 3-5
5 Stage 2	<ul style="list-style-type: none"> ➤ Listing Brokerage to provide detailed information to qualified prospects which sign the CA, including the CIM, access to the data room and a form PSA ➤ Listing Brokerage to facilitate all diligence by interested parties 	Week 5 - TBD



Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> ➤ The Listing Brokerage will canvass the market and then determine a bid date in conjunction with the Seller ➤ The Seller will prepare a Vendor's form of Purchase and Sale Agreement "(PSA") 	
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSAs or other proposals, including development proposals 	TBD
<i>Phase 3 - Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> ➤ Proposal short listing and approval ➤ 2nd Round Bids - Prospective purchasers may be asked to re-submit PSAs 	TBD
Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	TBD
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Motion for sale approval and close transaction 	TBD

- (d) co-operate with all licensed real estate brokers and agents in the sale of the Properties (collectively the "Cooperating Agents" and each a "Cooperating Agent"), with any commissions or fees of such Cooperating Agents to be paid by the purchasers or by the Listing Brokerage (out of the Listing Fee (as defined below));
- (e) ensure that there is continuity in the assignment of individual staff members and partners to the work performed by the Listing Brokerage under the terms of this engagement. In particular, the Listing Brokerage agrees to ensure that individual staff members originally assigned, including Derek Lobo (collectively the "Listing Team"), to perform work in connection with the Listing Brokerage's engagement, will each be available and will devote the time required to undertake the assignment contemplated herein;
- (f) subject to the instructions of the Seller, to assist the Seller in negotiating binding agreements of purchase and sale subject to Court approval with those parties identified by the Seller. Only the Seller shall have authority to accept offers and the Listing Brokerage shall not have any authority whatsoever to enter into any sale, financing or other contract on behalf of the Seller and/or to otherwise bind the Seller in any manner whatsoever;
- (g) continue to assist the Seller in connection with the sale of the Properties and seeking Court approval after the execution of a binding agreement of purchase and sale with respect to the same until such sale has been successfully concluded; and
- (h) unless the Seller's written consent is provided in advance, to act solely for the benefit of the Seller in connection with the marketing and sale of the Properties and not to have any direct or indirect interest in any entity purchasing or proposing to purchase the Properties and not to receive any payments or other benefits from said purchasers or potential purchasers.



5. **Commission Payable to the Listing Brokerage.** The Seller shall pay to the Listing Brokerage upon the successful completion of sale of each of the Properties, a commission payable in accordance with Schedule "A" attached hereto (the "Listing Fee"). No additional commission or fee shall be payable by the Seller in the event that the Properties are sold through a Cooperating Agent, it being the intention that the commission and fee of any Cooperating Agent be paid either by the purchaser or the Listing Brokerage (out of the Listing Fee, in accordance with Section 4(b) above). A Cooperating Agent may be employed at the Listing Brokerage so long that they are not a member of the Listing Team. For greater certainty, other than the Listing Team, all other agents shall be treated as third party Cooperating Agents, shall not be provided with any confidential information and shall be compensated pursuant to this Agreement as a Cooperating Agent. Said Cooperating Agent commission shall be payable by the purchaser or the Listing Brokerage (from the Listing Fee) to said Cooperating Agent's brokerage. The Seller acknowledges that payment of HST applies on all commissions payable. As it relates to the commission payable, a sale constitutes a court approved sale of the Properties, share transaction, redemption, exercise of first right to purchase, option or other form of sale or transfer of the rights of the subject Properties. The Seller agrees to notify the Listing Brokerage of the successful completion or closing. The Seller hereby instructs its solicitors and agrees to advise the Court to distribute payment to the Listing Brokerage in the amount noted above directly out of the proceeds of sale in accordance with an accepted agreement of purchase and sale and to have same addressed as a closing cost to the transaction. For greater certainty, the Listing Agent shall not be entitled to the Listing Fee or any other fee in connection with any assignment or repayment of the Kingsett Mortgage Corporate mortgage, unless such assignment or repayment is made as part of a sale of the Properties.

6. **Acknowledgments.** The Listing Brokerage acknowledges and agrees in favour of the Seller that:

- (a) the Properties are to be marketed and sold on an "as is, where is" basis and, accordingly, any agreement of purchase and sale shall provide for an acknowledgment by such purchaser that the Properties are being sold by the Seller on an "as is, where is" basis, and that no representations or warranties have been or will be made by the Seller or anyone acting on its behalf, to the Listing Brokerage or such purchaser as to the condition of the Properties or any buildings located thereon;
- (b) the Seller may annex a schedule to the transfer/deed of land (or other registrable document with respect to the sale) expressly excluding any covenants deemed to be included pursuant to the *Land Registration Reform Act* of Ontario, other than one to the effect that the Seller has the right to convey the Properties;
- (c) in lieu of a transfer/deed of land for the Properties, the Seller will vest title to the Properties by way of a vesting order; and
- (d) the sale of the Properties requires the prior approval of the Ontario Superior Court of Justice (Commercial List) in said Court's sole and absolute discretion.

7. **Carve-Out.** In the event that the Seller enters into a transaction with Walter Thompson or his designee or affiliate, which transaction is essentially the proposed transaction described in the Affidavit of Justin Walton sworn June 9, 2017 (the "Excluded Party"), the Listing Brokerage will be entitled to no fee. In addition, if the best and highest closable offer the Listing Agent is able to generate (the "Closeable Offer") would not result in sufficient proceeds to repay the Kingsett Mortgage Corporation in full, and Kingsett Mortgage Corporation does not consent to the Closeable Offer and instead credit bids its debt, the Listing Agent shall still be entitled to the Listing Fee it would have received based on the proceeds that would have been generated from the Closeable Offer.

8. **Advertisement Expenses & Third Party Consultants.** All advertising and sales promotion shall be subject to the approval of the Seller and all such advertisement and promotional material shall be prepared, published and distributed by the Listing Brokerage and shall be at the expense of the Listing Brokerage. All third party reports and legal service fees requested and/or approved by the Seller shall be at the expense of the Seller.



9. **Indemnity.** The Listing Brokerage confirms that it owes an obligation to the Seller and its officers, employees and agents (collectively, the "**Indemnified Parties**") to carry out its activities in a competent and professional manner acting reasonably and in good faith. As such, the Listing Brokerage confirms that it owes an obligation to the Indemnified Parties with respect to claims made by third parties against the Indemnified Parties arising out of work performed by the Listing Brokerage or the Listing Brokerage's failure to comply with its obligations hereunder. This indemnity shall survive the expiration or termination of the Agreement.

10. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

11. **Assignment.** This Agreement shall not be assigned in whole or in part by the Listing Brokerage without the prior written consent of the Seller which consent may be unreasonably and/or arbitrarily withheld and any assignment made without that consent is void and of no effect.

12. **Seller's Capacity.** Notwithstanding the foregoing or anything else contained herein or elsewhere, the Listing Brokerage acknowledges and agrees that both the execution of this Agreement and any transaction or transactions involving a sale of any of the Properties require the prior approval of the Ontario Superior Court of Justice (Commercial List) in said Court's sole and absolute discretion.

13. **Warranty.** Subject always to Section 12 above and the remainder of this Section 13, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Properties for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Properties and cannot confirm any third party interests or claims with respect to the Properties such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Properties, which may affect the sale of the Properties. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

14. **Facsimile & Counterparts.** This Agreement and any other agreement delivered in connection therewith, and any amendments thereto, may be executed by facsimile transmittal facilities, or electronic copy in a portable document format or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this Agreement, or such other agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement, or such agreement or amendment, as the case may be, to the requesting party by facsimile or by electronic copy in a portable document format or such similar format. This Agreement may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date first written above.

15. **Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario. If any provision hereof is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed to be deleted and the remaining portions of this Agreement shall remain valid and binding on the parties hereto.

16. **Finder's Fees.** The Seller does not consent to the Listing Brokerage or any Cooperating Agents (or their respective affiliates) receiving and retaining, in addition to the commission provided for or otherwise contemplated in this Agreement, a finder's fee for any financing of the Properties. Section 9 of the pre-printed portion of this Agreement is amended accordingly.



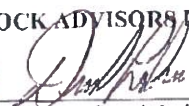
17. **Verification of Information.** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Properties and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. For greater certainty, none of the Listing Brokerage or the Listing Brokerage's representatives may bind the Seller or execute any documentation on behalf of the Seller. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage. Section 10 of the pre-printed portion of this Agreement is amended accordingly.

18. **Listing Period.** The term of this Agreement shall begin upon acceptance of this Agreement (the "Commencement Date") and shall expire one minute before midnight on the eight month anniversary following the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any other provision in this Agreement, the Listing Brokerage shall not advertise the Properties on MLS until the Seller provides expressed authority to do so and all marketing materials have been approved. The Listing Brokerage shall have five (5) days following said approval to post the Properties on the MLS.

19. **Paramountcy.** In the event of any conflict or inconsistency between the provisions of the pre-printed portion of this Agreement and the provisions of this Schedule "A", the provisions of this Schedule "A" shall prevail and govern

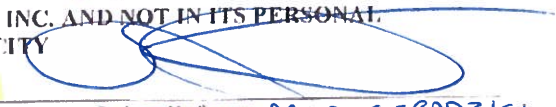
SYN ROCK ADVISORS INC.

Per:


Name: Derek Lobo
Title: Officer and Broker

KSV KOFMAN INC. SOLELY IN ITS CAPACITY AS
PROPOSED COURT APPOINTED RECEIVER OF
CERTAIN PROPERTY OF GENERX (BYWARD
HALL) INC. AND NOT IN ITS PERSONAL
CAPACITY

Per:


Name: ~~Robert Kofman~~ DAVID SIERADZKI
Title: ~~President~~ MANAGING DIRECTOR