

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) THURSDAY, THE 3rd DAY
)
JUSTICE MESBUR) OF AUGUST, 2017

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of certain of the assets, undertaking and property of Scollard Development Corporation (the "**Debtor**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Carttera Management Inc. ("**Carttera**"), as purchaser, dated June 20, 2017, as such agreement was assigned by Carttera to 1606 – 1614 Charles Street East LP, by its general partner, 1606 – 1614 Charles Street East GP Inc. (the "**Purchaser**") by an assignment and assumption agreement dated August 2, 2017 (the agreement as assigned herein referred to as the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "2" to the Seventh

Report of the Receiver dated July 24, 2017 (the "**Seventh Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all the Receiver's and the Debtor's right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventh Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Seventh Report is hereby abridged and validated, if necessary, so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is commercially reasonable and is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's and the Debtor's right, title and interest in and to the

Purchased Assets described in the Sale Agreement, including without limitation the Lands legally described in **Schedule "B"** hereto shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), the Unit Purchase Obligations (as such term is defined in the Sale Agreement), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Wilton-Siegel dated February 2, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

5. **THIS COURT ORDERS** that upon the registration in the LRO of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser, or as it may direct, as the owner of the subject real property identified in **Schedule "B"** hereto (the "**Real Property**") in fee simple,

and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS** that immediately after the delivery of the Receiver's Certificate, each of the Unit Purchase Agreements (as defined in the Sale Agreement) shall be deemed to have been terminated by the Receiver.

8. **THIS COURT ORDERS** that following the delivery of the Receiver's Certificate, the Receiver is authorized and directed to make the following distributions:

- (a) first, all amounts owing to Downing Street Financial Inc. to repay all amounts owing to it;
- (b) second, to Trisura Guarantee Insurance Company ("**Trisura**") and Everest Insurance Company ("**Everest**") in the amount of \$151,191.60 and any further amounts that may be owing from time to time to repay all amounts owing to Trisura and Everest in accordance with paragraphs 35 and 36 of the Order made in this proceeding on February 2, 2017 (as amended, the "**Receivership Order**");

- (c) third, to Leeswood Design Build Ltd. and the IBI Group (as defined in the Seventh Report) in the amounts of \$13,011.08 and \$33,876.84, respectively, provided counsel for each such entity confirms its agreement that such amount represents the applicable entity's entitlement to a special priority lien under section 78 of the *Construction Lien Act*, and failing which the distribution will be subject to further Order of Court; and
- (d) fourth, to Grant Thornton Limited, in its capacity as Court-appointed trustee of Scollard Trustee Corporation in the proceedings bearing Court File No. CV-16-11567-00CL (in such capacity, the "**Trustee**"), in the amount of approximately \$5,100,000, as a partial distribution of amounts owing to Scollard Trustee Corporation.

9. **THIS COURT ORDERS** that following the completion of the Transaction the Receiver shall hold the amount of \$1,000,000 in reserve (the "**Reserve Amount**") for Trisura and Everest until the Tarion Bonds (as defined in the Receivership Order) are returned to Trisura and Everest for cancellation. The Receiver shall, from time to time, pay such amounts from the Reserve Amount to Trisura on behalf of Trisura and Everest as directed by Trisura as is required to fully indemnify Trisura and Everest for any and all losses, damages, liabilities, costs and expenses pursuant to the Tarion Bonds and the Indemnity Agreements (as defined in the Receivership Order) in accordance with paragraphs 35 and 36 of the Receivership Order, provided the Receiver shall have first received evidence satisfactory to it with respect to such losses, damages, liabilities, costs and expenses.

10. **THIS COURT ORDERS** that following the making of the distributions contemplated in paragraph 8 hereof, the Receiver is authorized to make such further distributions to the Trustee from time to time up to the amount owing to Scollard Trustee Corporation.

11. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

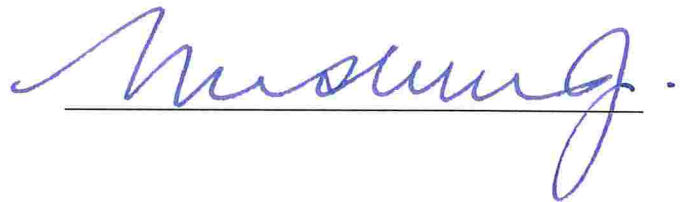
12. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. **THIS COURT ORDERS** that the Confidential Appendices to the Seventh Report shall be sealed and kept confidential pending completion of the Transaction.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "M. S. J.", is written over a horizontal line.

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

AUG 03 2017

PER / PAR: 

Schedule "A" – Form of Receiver's Certificate

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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 2, 2017, KSV Kofman Inc. was appointed as receiver (in such capacity, the "**Receiver**"), without security, of all the real property registered on title as being owned by Scollard Development Corporation (the "**Debtor**") (collectively, the "**Lands**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Lands (the "**Property**").

II. Pursuant to an Order of the Court dated August 3, 2017, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Carttera Management Inc. ("**Carttera**"), as purchaser, dated June 20, 2017, as such agreement was assigned by Carttera to 1606 – 1614

Charles Street East LP, by its general partner, 1606 – 1614 Charles Street East GP Inc. (the "**Purchaser**") by an assignment and assumption agreement dated August 2, 2017, (the agreement as assigned herein referred to as the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of this certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as court-appointed receiver of all the real property registered on title as being owned by Scollard Development Corporation and of all the assets, undertakings and properties of Scollard Development Corporation acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN 26484-0005 (LT)

PART OF LOT 8, BLOCK 4, PLAN H50035 WHITBY; PART OF LOT 9, BLOCK 4, PLAN H50035 WHITBY; PART OF LOT 14, BLOCK 4, PLAN H50035 WHITBY; PART OF LOT 15, BLOCK 4, PLAN H50035 WHITBY AS IN INSTRUMENT NO. D405505; TOWN OF WHITBY

PIN 26484-0006 (LT)

PART OF LOT 8, BLOCK 4, PLAN H50035 WHITBY; PART OF LOT 15, BLOCK 4, PLAN H50035 WHITBY AS IN INSTRUMENT NO. CO139720 & PART OF LOT 18, PLAN 40R-10885; SUBJECT TO INSTRUMENT NO. CO139720; TOWN OF WHITBY

PIN 26484-0007 (LT)

PART OF LOT 7, BLOCK 4, PLAN H50035 WHITBY; PART OF LOT 16, BLOCK 4, PLAN H50035 WHITBY AS IN INSTRUMENT NO. D374163; SUBJECT TO INSTRUMENT NO. CO132238; TOWN OF WHITBY

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NOS.
26484-0005 (LT), 26484-0006 (LT) and 26484-0007 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
DR1297446	2014/09/08	CHARGE	\$13,600,000	SCOLLARD DEVELOPMENT CORPORATION	SCOLLARD TRUSTEE CORPORATION
DR1297450	2014/09/08	TRANSFER OF CHARGE		SCOLLARD TRUSTEE CORPORATION	OLYMPIA TRUST COMPANY, SCOLLARD TRUSTEE CORPORATION
DR1301869	2014/09/23	TRANSFER OF CHARGE		SCOLLARD TRUSTEE CORPORATION	OLYMPIA TRUST COMPANY, SCOLLARD TRUSTEE CORPORATION
DR1303201	2014/09/26	TRANSFER OF CHARGE		SCOLLARD TRUSTEE CORPORATION	OLYMPIA TRUST COMPANY, SCOLLARD TRUSTEE CORPORATION
DR1309302	2014/10/21	TRANSFER OF CHARGE		SCOLLARD TRUSTEE CORPORATION	OLYMPIA TRUST COMPANY, SCOLLARD TRUSTEE CORPORATION
DR1376600	2015/06/30	CHARGE	\$3,500,000	SCOLLARD DEVELOPMENT CORPORATION	TRISURA GUARANTEE INSURANCE COMPANY
DR1376618	2015/06/30	POSTPONEMENT		OLYMPIA TRUST COMPANY, SCOLLARD TRUSTEE CORPORATION	TRISURA GUARANTEE INSURANCE COMPANY

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
DR1422316	2015/11/13	NOTICE		SCOLLARD DEVELOPMENT CORPORATION	TRISURA GUARANTEE INSURANCE COMPANY
DR1422354	2015/11/13	POSTPONEMENT		OLYMPIA TRUST COMPANY, SCOLLARD TRUSTEE CORPORATION	TRISURA GUARANTEE INSURANCE COMPANY
DR1496316	2016/07/20	CONSTRUCTION LIEN	\$130,111	LEESWOOD DESIGN BUILD LTD.	
DR1511251	2016/08/31	CERTIFICATE		LEESWOOD DESIGN BUILD LTD.	
DR1534483	2016/11/03	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	GRANT THORNTON LIMITED
DR1541405	2016/11/24	CONSTRUCTION LIEN	\$338,768	IBI GROUP ARCHITECTS (CANADA) INC.	
DR1544472	2016/12/01	CONSTRUCTION LIEN	\$338,768	IBI GROUP PROFESSIONAL SERVICES (CANADA) INC.	
DR1560774	2017/01/23	CERTIFICATE		IBI GROUP PROFESSIONAL SERVICES (CANADA) INC. ET AL.	

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
DR1567474	2017/02/14	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	KSV KOFMAN INC.
DR1590410	2017/05/03	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	KSV KOFMAN INC.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

Assumed Encumbrances from PIN 26484-0005 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
D70819	1978/06/15	BYLAW DEEM PLNP			
D492865	1997/05/08	AGREEMENT			THE TOWN OF WHITBY
DR31730	2001/10/29	NOTICE AGREEMENT		MAC'S FUTONS 4-U INC.	THE CORPORATION OF THE TOWN OF WHITBY
DR1552568	2016/12/23	NO APL ABSOLUTE		SCOLLARD DEVELOPMENT CORPORATION	

Assumed Encumbrances from PIN No. 26484-0006 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
D70819	1978/06/15	BYLAW DEEM PLNP			
DR1552568	2016/12/23	NO APL ABSOLUTE		SCOLLARD DEVELOPMENT CORPORATION	

Assumed Encumbrances from PIN No. 26484-0007 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
D70819	1978/06/15	BYLAW DEEM PLNP			
DR1552568	2016/12/23	NO APL ABSOLUTE		SCOLLARD DEVELOPMENT CORPORATION	

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. AMD 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

Court File No: CV-17-11689-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#573071)
Tel.: (416) 777-6254
Fax: (416) 863-1716

Counsel to the Receiver,
KSV Kofman Inc.