

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**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**

Respondents

**APPLICATION UNDER SECTION 37 OF THE  
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006, c.  
29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

**MOTION RECORD  
(Returnable January 31, 2017)**

**Volume 1 of 2**

January 20, 2017

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# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,  
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,  
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947  
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CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,  
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and  
HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION**

Respondents

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**Tab A**

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

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Respondents

**NOTICE OF MOTION  
(returnable January 31, 2017)**

Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of the Respondents, will make a motion to a judge presiding over the Commercial List on Tuesday, January 31, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

1. **THE MOTION IS FOR**, amongst other things:

- (a) if necessary, an Order abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) an Order approving the First Report of the Trustee dated November 10, 2016 (the “**First Report**”), the Second Report of the Trustee dated November 28, 2016 (the “**Second Report**”), the Third Report of the Trustee dated December 13, 2016 (the “**Third Report**”), the Fourth Report of the Trustee dated January 20, 2017 (the “**Fourth Report**”, and together with the First Report, the Second Report and the Third Report, the “**Reports**”) and the activities of the Receiver set out in each of the Reports;
- (c) to prevent the immediate forced sale of the Boathaus Property (as defined in the Fourth Report), an Order in accordance with subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”), appointing KSV Kofman Inc. (“**KSV**”) as the court-appointed receiver and manager of the Boathaus Property (together with all the assets, undertakings and properties of the registered owner of the Boathaus Property acquired for or used in relation to the Boathaus Property) to, amongst other things, market and solicit offers for the investment in, development of and/or sale of the Boathaus Property (and such related property) pursuant to a Court-supervised process (the “**Boathaus Proceedings**”), which Boathaus Proceedings would be assigned a new Court file number and proceed separately from the present proceedings; and
- (d) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to the Order of the Honourable Justice Newbould dated October 27, 2016 (the “**Appointment Order**”), GTL was appointed as the Trustee, without security, of all the assets, undertakings and properties of each of the Respondents;
- (b) the purpose of the Trustee’s appointment (the “**Appointment**”) is to protect the interests of the investing public, who, through the Trustee, are syndicated

mortgage investors (the “**Investors**”) with secured lending positions registered on title to real property owned by 16 borrowers/developers (the “**Developers**”);

- (c) the Respondents (prior to the Trustee’s Appointment) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages;
- (d) the Respondents are distinct entities from the Developers;
- (e) the circumstances leading to the Trustee’s Appointment are summarized in each of the Reports, with detailed background information contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016, which was filed by the Superintendent of Financial Services in support of the Appointment;
- (f) the Boathaus Property is owned by one of the Developers, Scollard Development Corporation (the “**Boathaus Developer**”), a privately-owned Ontario corporation with a registered office located in Concord, Ontario;
- (g) Mr. John Davies, the principal of 11 of the 16 Developers, is the sole director and officer of the Boathaus Developer;
- (h) according to Mr. Davies, the intended use for the Boathaus Property is a condominium project;
- (i) the Boathaus Developer purchased the Boathaus Property on or about September 8, 2014 for \$9 million, and the syndicated mortgage investment in respect of the Boathaus Property (the “**Boathaus SMI**”) was immediately registered on title for \$13.6 million;
- (j) the Respondent holding the Boathaus SMI (along with syndicated mortgage investments in respect of certain other properties) is Scollard Trustee Corporation (“**STC**”);

- (k) several adjustments were made to the Boathaus SMI between September 8, 2014 and October 21, 2014 to reflect that Olympia Trust Company would hold the Boathaus SMI jointly with STC to accommodate RRSP investors;
- (l) the Boathaus SMI is for a term of three years (i.e., maturing in the ordinary course in or around September 2017), with interest payable on the first of each quarter (i.e., the first of January, April, July and October) and the possibility of a bonus interest amount on maturity;
- (m) a \$2.35 million mortgage in favour of Firm Capital Mortgage Fund Inc. ("**Firm Capital**") was registered on title to the Boathaus Property on December 18, 2014 (the "**Firm Capital Boathaus Mortgage**"), and a postponement of the Boathaus SMI to the Firm Capital Boathaus Mortgage was then immediately registered on title. The Firm Capital Boathaus Mortgage was to have matured on or around January 1, 2017;
- (n) a \$3.5 million charge in favour of Trisura Guarantee Insurance Company ("**Trisura**") was registered on title to the Boathaus Property on June 30, 2015 (the "**Trisura Boathaus Charge**"), and a postponement of the Boathaus SMI to the Trisura Boathaus Charge was then immediately registered on title. The Trustee understands from Harris + Harris LLP ("**H+H**"), counsel involved in the Boathaus Property, that Trisura's role is to protect the deposits given by purchasers of the planned condominium units, which deposits, according to Trisura, are being held by Chaitons LLP;
- (o) three construction liens totalling \$807,647.84 in the aggregate have also been registered on title to the Boathaus Property;
- (p) according to materials provided to the Trustee by H+H, the Davies Boathaus Developer failed to pay the quarterly interest amount that was due under the Boathaus SMI on October 1, 2016;

- (q) since the Trustee's Appointment over STC on October 27, 2016, the Davies Boathaus Developer has defaulted in several additional respects, including, without limitation:
- (i) on November 8, 2016, Firm Capital issued a notice of intention to enforce security pursuant to section 244 of the BIA as a result of the Davies Boathaus Developer's failure to pay certain interest owing under the Firm Capital Boathaus Mortgage;
  - (ii) on December 7, 2016, the Davies Boathaus Developer (together with eight other Developers over which Mr. Davies is principal, and one of his other related companies), filed materials seeking protection from creditors under the *Companies' Creditors Arrangement Act* (Canada), which was dismissed by the Honourable Justice Penny on December 15, 2016, as discussed in the Fourth Report;
  - (iii) on December 16, 2016, Firm Capital issued a notice of sale in respect of the Firm Capital Boathaus Mortgage, which notice provides, amongst other things, that Firm Capital will sell the Boathaus Property unless approximately \$2.5 million is paid to it by January 21, 2017; and
  - (iv) on January 1, 2017, the Davies Boathaus Developer failed to pay, for a second quarter, the quarterly interest amount that became due under the Boathaus SMI, and also failed to repay the Firm Capital Boathaus Mortgage (which the Trustee understands was to have matured in the normal course on January 1, 2017);
- (r) as discussed in detail in the Fourth Report (and the other Reports), the Trustee has made numerous and repeated enquiries with the Davies Boathaus Developer to ascertain how it plans on satisfying the Firm Capital Boathaus Mortgage, but, as of the date of the Fourth Report, the Trustee has no comfort or information regarding the Davies Boathaus Developer's ability or willingness to repay the Firm Capital Boathaus Mortgage and the deadline for doing so is about to expire;

- (s) at this stage, the Trustee considers that it has exhausted any and all reasonable efforts to allow the Davies Boathaus Developer to implement its own resolution to deal with its liquidity problems. Rather than allow the Boathaus Property to be sold outside a formal Court process, which otherwise appears to be imminent, the Trustee believes that its only reasonable and prudent option under the circumstances is to have a receiver and manager implement a formal Court-supervised marketing process for a potential investment in, development of and/or sale of the Boathaus Property, with the hope of generating a better recovery to the Investors than would be available by a private forced sale;
- (t) as at January 1, 2017, the Davies Boathaus Developer was indebted under the terms of the Boathaus SMI in the aggregate sum of \$14,149,577.90 plus accruing interest and professional fees (collectively, the “**Boathaus SMI Indebtedness**”). As the Boathaus Property was purchased for \$9 million in 2014 and the encumbrances registered on title ahead of the Boathaus SMI are for materially less than this amount, the Boathaus SMI appears to be the fulcrum mortgage;
- (u) pursuant to the Receivership Order, the Receiver is authorized and empowered to, amongst other things, receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, the right to enforce any security held by the Respondents, and to settle, extend or compromise any indebtedness owing to the Respondents;
- (v) on January 17, 2017, the Trustee made formal written demand on the Davies Boathaus Developer for the Boathaus SMI Indebtedness, which was accompanied by a notice of intention to enforce security pursuant to subsection 244(1) of the BIA;
- (w) as of the date of the Fourth Report, the Davies Boathaus Developer has failed to make payment in accordance with the demands, make alternative arrangements acceptable to the Trustee or initiate any fresh insolvency filings, and the Trustee also understands that the Firm Capital Boathaus Mortgage remains outstanding;



- (x) the Trustee therefore considers it reasonable and prudent to commence the proposed Boathaus Proceedings in an effort to recover the Boathaus SMI Indebtedness. The Trustee does not believe that there is any other viable and economically-beneficial option at the present time for the Boathaus SMI other than the proposed Boathaus Proceedings, and a decision needs to be made imminently;
- (y) in the circumstances set out above, the Trustee believes that it is just and equitable that the proposed Boathaus Proceedings be ordered by this Court. It is the Trustee's view that the proposed Boathaus Proceedings are necessary for the protection of the Investors of the Boathaus SMI and possibly other stakeholders, including the purchasers who have deposited funds to purchase condominium units on the Boathaus Property. The Trustee believes that the proposed Boathaus Proceedings would enhance the prospect of recovery by the Trustee for the Investors and protect all stakeholders;
- (z) the Trustee recommends that KSV be appointed as the receiver and manager of the Boathaus Property, as KSV is licensed to act in this capacity and is familiar with the Boathaus Property and the Davies Boathaus Developer's arrangements with its creditors;
- (aa) KSV has consented to act as the receiver and manager of the Boathaus Property should the Court so appoint it, and a copy KSV's consent is attached to the Fourth Report;
- (bb) in order to maintain independence between the Trustee and the proposed receiver and manager of the Boathaus Property, and in order to maximize procedural efficiency in both these proceedings and the proposed Boathaus Proceedings, the Trustee recommends that the proposed Boathaus Proceedings be assigned a new Court file number and proceed separately from the present proceedings;

- (cc) the Trustee has filed the Reports with the Court, and the Trustee's activities described therein have been reasonable and responsible in accordance with the Trustee's mandate as provided by the Appointment Order;
- (dd) the facts set out in the Reports;
- (ee) subsection 243(1) of the BIA;
- (ff) section 101 of the CJA;
- (gg) the *Mortgage Brokerages, Lenders and Administrators Act* (Ontario);
- (hh) rules 1.04, 2.03, 3.02, 37 and 41 of the *Rules of Civil Procedure* (Ontario); and
- (ii) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Fourth Report, which contains copies of each of the previous Reports; and
- (b) such further and other material as counsel may submit and this Court may permit.

Date: January 20, 2017

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*Lawyers for Grant Thornton Limited, in its  
capacity as court-appointed trustee of each  
of the Respondents*

**TO: ATTACHED SERVICE LIST**

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)  
TRUSTEE CORPORATION, ET AL.

Applicant

Respondents

Court File No. CV-16-11567-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION**  
(returnable January 31, 2017)

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*Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of each of the Respondents*

# Tab B

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

THE HONOURABLE  
  
JUSTICE

)  
)  
)

TUESDAY, THE 31<sup>ST</sup>  
  
DAY OF JANUARY, 2017

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**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**

Respondents

**APPLICATION UNDER SECTION 37 OF THE  
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,  
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

**ORDER  
(appointing Receiver)**

**THIS MOTION**, made by Grant Thornton Limited ("GTL"), in its capacity as the Court-appointed trustee (in such capacity, the "Trustee") of Scollard Trustee Corporation ("STC"), for an Order, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*,

R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Kofman Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all the real property registered on title as being owned by Scollard Development Corporation (the "**Debtor**") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fourth Report of the Trustee dated January 20, 2017 and the appendices thereto, including, without limitation, the consent of KSV dated January 19, 2017 to act as the Receiver, and on hearing the submissions of counsel for the Trustee and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Eunice Baltkois sworn January 20, 2017,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to manage, operate, and carry on the business of the Debtor in respect of the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in respect of the Property, cease to carry on all or any part of the business in respect of the Property, or cease to perform any contracts of the Debtor in respect of the Property;
- d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor in respect of the Property or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in respect of the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- g) to settle, extend or compromise any indebtedness owing to the Debtor in respect of the Property;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor in



respect of the Property, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of investment, development and/or sale as the Receiver in its discretion may deem appropriate;
- k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof in respect to the Property for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for the Property;
- q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect to the Property; and
- r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access

to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver or affecting the Property, are hereby stayed and suspended except with the written consent of the

Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and

the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of

this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$4,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that, without in any way limiting the generality of paragraph 20 of this Order, the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$3,500,000 (or such greater amount as this Court may by further Order authorize) from <\*> (the

"Identified Borrowings") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property in favour of Firm Capital Mortgage Fund Inc., which Identified Borrowings shall benefit from the Receiver's Borrowings Charge on the same terms and conditions as provided in paragraph 20 of this Order.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court; however, the Receiver shall be entitled but not obligated to register the Receiver's Borrowings Charge on title to the Real Property.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order, including, without limitation, for the Identified Borrowings.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.ksvadvisory.com/insolvency-cases/scollard-development-corporation>.



26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

27. **THIS COURT ORDERS AND DIRECTS** that the within proceedings in respect of the Debtor, the Receiver and the Property (collectively, the "**Receivership Proceedings**") shall, immediately upon the issuance of this Order, be assigned the new Court file number referenced in paragraph 28 of this Order and proceed separately from the proceedings in respect of STC, the Trustee and the assets, properties and undertakings of STC.

28. **THIS COURT ORDERS AND DIRECTS** that the title of proceedings in the Receivership Proceedings shall be as follows:

Court File No. CV-17-\_\_\_\_\_ -00CL

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

**IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT  
CORPORATION**

**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**

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court in the Receivership Proceedings for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Trustee shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of STC's security or, if not so provided by STC's security, then on a substantial indemnity basis to be paid by the Receiver from the Property with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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**SCHEDULE "A"****LEGAL DESCRIPTION OF THE REAL PROPERTY**

The real property legally described by the following PINs:

- (a) 26484-0005 (LT);
- (b) 26484-0006 (LT); and
- (c) 26484-0007 (LT).

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

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

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., the receiver and manager (in such capacity, the "**Receiver**") of certain real property registered on title as being owned by Scollard Development Corporation (the "**Debtor**") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 31<sup>st</sup> day of January 2017 (the "**Order**") made in a motion assigned to Court file number CV-17-\_\_\_\_\_ -00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable [on demand by the Lender][by no later than the \_\_\_\_ day of \_\_\_\_\_] with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time plus fees in the aggregate of \$ \_\_\_\_\_.

3. Such principal sum with interest and fees thereon is, by the terms of the Order, together with the principal sums and interest and fees thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal, interest and fees under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2017.

KSV Kofman Inc., solely in its capacity as the Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

The real property legally described by the following PINs:

- (a) 26484-0005 (LT);
- (b) 26484-0006 (LT); and
- (c) 26484-0007 (LT).

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)  
TRUSTEE CORPORATION, ET AL.

Applicant

Respondents

Court File No. CV-16-11567-00CL

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

Proceedings commenced at Toronto

**ORDER  
(appointing Receiver)**

**AIRD & BERLIS LLP**  
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*Lawyers for Grant Thornton Limited, in its capacity as the court-  
appointed trustee of Scottard Trustee Corporation*

# Tab C



Revised: January 21, 2014  
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. CV-16-11567-00CL

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

THE HONOURABLE \_\_\_\_\_ ) WEEKDAY TUESDAY, THE # 31<sup>ST</sup>  
JUSTICE \_\_\_\_\_ ) DAY OF MONTH JANUARY, 20 YR 2017

**PLAINTIFF<sup>†</sup>**

Plaintiff

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**DEFENDANT**

Defendant

**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**

Respondents

<sup>†</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

**APPLICATION UNDER SECTION 37 OF THE  
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,  
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

**ORDER  
(appointing Receiver)**

THIS MOTION, made by the Plaintiff<sup>2</sup> Grant Thornton Limited ("GTL"), in its capacity as the Court-appointed trustee (in such capacity, the "**Trustee**") of Scollard Trustee Corporation ("STC"), for an Order, pursuant to sections subsection 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing [RECEIVER'S NAME] KSV Kofman Inc. ("KSV") as receiver [and manager] (in such capacities, the "**Receiver**"), without security, of all ~~of~~ the real property registered on title as being owned by Scollard Development Corporation (the "Debtor") and that is listed on Schedule "A" hereto (collectively, the "Real Property") and of all the assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor the Real Property (together with the Real Property, the "Property"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto Fourth Report of the Trustee dated January 20, 2017 and the appendices thereto, including, without limitation, the consent of KSV dated January 19, 2017 to act as the Receiver, and on hearing the submissions of counsel for [NAMES] the Trustee and such other counsel as were present, no one appearing for [NAME] any other person on the service list although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver, Eunice Baltkois sworn January 20, 2017.

**SERVICE**

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~notice of ~~Motion~~motion and the ~~Motion~~motion record is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to ~~sections~~subsection 243(1) of the BIA and section 101 of the CJA, [~~RECEIVER'S NAME~~]KSV is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property")~~the Property.

**RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- a) ~~(a)~~ to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b) ~~(b)~~ to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) ~~(c)~~ to manage, operate, and carry on the business of the Debtor in respect of the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in respect of the Property, cease to carry on all or any part of the

<sup>3</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

business in respect of the Property, or cease to perform any contracts of the Debtor in respect of the Property;

- d) ~~(d)~~ to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- e) ~~(e)~~ to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor in respect of the Property or any part or parts thereof;
- f) ~~(f)~~ to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in respect of the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- g) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the Debtor in respect of the Property;
- h) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- i) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor in respect of the Property, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- j) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and

<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

conditions of investment, development and/or sale as the Receiver in its discretion may deem appropriate;

k) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;

~~(i) without the approval of this Court in respect of any transaction not exceeding \$ \_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$ \_\_\_\_\_; and (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*,~~†~~ or section 31 of the Ontario *Mortgages Act*, as the case may be,~~‡~~<sup>5</sup> shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;~~

l) ~~(l)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

m) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

n) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- n) ~~(e)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof in respect to the Property for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- p) ~~(f)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for ~~any property owned or leased by the Debtor~~ the Property;
- q) ~~(g)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect to the Property; and
- r) ~~(h)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the ~~business or affairs of the Debtor~~ Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the

"Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. — THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

**NO PROCEEDINGS AGAINST THE RECEIVER**

7. ~~8.~~ **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. ~~9.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. ~~11.~~ **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including,



without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. ~~13.~~ **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

13. ~~14.~~ **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

14. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### LIMITATION ON THE RECEIVER'S LIABILITY

16. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### RECEIVER'S ACCOUNTS

17. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

18. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. ~~20.~~ **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

## FUNDING OF THE RECEIVERSHIP

20. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$4,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that, without in any way limiting the generality of paragraph 20 of this Order, the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$3,500,000 (or such greater amount as this Court may by further Order authorize) from ~~<\*>~~ (the "**Identified Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property in favour of Firm Capital Mortgage Fund Inc., which Identified Borrowings shall benefit from the Receiver's Borrowings Charge on the same terms and conditions as provided in paragraph 20 of this Order.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court; however, the Receiver shall be entitled but not obligated to register the Receiver's Borrowings Charge on title to the Real Property.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "AB"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order, including, without limitation, for the Identified Borrowings.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.ksvadvisory.com/insolvency-cases/scollard-development-corporation>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. **THIS COURT ORDERS AND DIRECTS** that the within proceedings in respect of the Debtor, the Receiver and the Property (collectively, the "Receivership Proceedings") shall,

immediately upon the issuance of this Order, be assigned the new Court file number referenced in paragraph 28 of this Order and proceed separately from the proceedings in respect of STC, the Trustee and the assets, properties and undertakings of STC.

28. THIS COURT ORDERS AND DIRECTS that the title of proceedings in the Receivership Proceedings shall be as follows:

Court File No. CV-17- \_\_\_\_\_ -00CL

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

**IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION**

**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**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court in the Receivership Proceedings for advice and directions in the discharge of its powers and duties hereunder.

30. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

32. ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. ~~31.~~ **THIS COURT ORDERS** that the ~~Plaintiff~~Trustee shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of ~~the Plaintiff~~STC's security or, if not so provided by ~~the Plaintiff~~STC's security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor's estate~~Property with such priority and at such time as this Court may determine.

34. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

---

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE REAL PROPERTY**

The real property legally described by the following PINs:

(a) 26484-0005 (LT);

(b) 26484-0006 (LT); and

(c) 26484-0007 (LT).



SCHEDULE "B"

RECEIVER CERTIFICATE

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

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

1. **THIS IS TO CERTIFY** that [~~RECEIVER'S NAME~~], the receiver (the "Receiver") of ~~KSV Kofman Inc.~~, the receiver and manager (in such capacity, the "Receiver") of certain real property registered on title as being owned by Scollard Development Corporation (the "Debtor") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties [~~DEBTOR'S NAME~~] of the Debtor acquired for, or used in relation to a ~~business carried on by the Debtor, including all proceeds thereof (collectively, the "Property")~~ the Real Property (together with the Real Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 31<sup>st</sup> day of \_\_\_\_\_, 2017 January 2017 (the "**Order**") made in an ~~action having a motion assigned to~~ Court file number CL \_\_\_\_\_ CV-17- \_\_\_\_\_ -00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable [~~on demand by the Lender~~][~~by no later than the \_\_\_\_\_ day of \_\_\_\_\_~~] with interest thereon calculated and compounded [~~daily~~][~~monthly not in advance on the \_\_\_\_\_ day of each month~~] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time plus fees in the aggregate of \$ \_\_\_\_\_.

3. Such principal sum with interest and fees thereon is, by the terms of the Order, together with the principal sums and interest and fees thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal ~~and~~, interest and fees under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, ~~20~~ 2017.

~~[RECEIVER'S NAME]~~ KSV Kofman Inc., solely in its capacity as the Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

25559533-1

**SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

The real property legally described by the following PINs:

(a) 26484-0005 (LT);

(b) 26484-0006 (LT); and

(c) 26484-0007 (LT).

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)  
TRUSTEE CORPORATION, ET AL.

Applicant

Respondents

Court File No. CV-16-11567-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER  
(appointing Receiver)

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Lawyers for Grant Thornton Limited, in its capacity as the  
court-appointed trustee of Scollard Trustee Corporation

2#223230.2

Document comparison by Workshare Compare on January-20-17 11:14:02 AM

<b>Input:</b>	
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Description	#28246494v1<CM> - Model Receivership Order - Revised January 21, 2014
Document 2 ID	interwovenSite://AB-WS1/CM/28223230/2
Description	#28223230v2<CM> - Draft Receivership Order (Boathaus)
Rendering set	Standard

<b>Legend:</b>	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	142
Deletions	129
Moved from	0
Moved to	0

# Tab D

Court File No. CV-16-11567-00CL

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

THE HONOURABLE  
JUSTICE

)  
)  
)

TUESDAY, THE 31<sup>ST</sup>  
DAY OF JANUARY, 2017

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**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**

Respondents

**APPLICATION UNDER SECTION 37 OF THE  
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,  
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

**ORDER  
(re Ancillary Matters)**

**THIS MOTION**, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of each of the Respondents, for an Order, *inter alia*, approving the First Report of the Trustee dated November 10, 2016 (the “**First**

**Report**”), the Second Report of the Trustee dated November 28, 2016 (the “**Second Report**”), the Third Report of the Trustee dated December 13, 2016 (the “**Third Report**”), the Fourth Report of the Trustee dated January 20, 2017 (the “**Fourth Report**”) and the activities of the Trustee set out in each of the First Report, the Second Report, the Third Report and the Fourth Report, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report, the Second Report, the Third Report and the Fourth Report, and on hearing the submissions of counsel for the Trustee and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Eunice Baltkois sworn January 20, 2017,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
  2. **THIS COURT ORDERS** that the First Report and the activities of the Trustee described therein be and are hereby approved.
  3. **THIS COURT ORDERS** that the Second Report and the activities of the Trustee described therein be and are hereby approved.
  4. **THIS COURT ORDERS** that the Third Report and the activities of the Trustee described therein be and are hereby approved.
  5. **THIS COURT ORDERS** that the Fourth Report and the activities of the Trustee described therein be and are hereby approved.
-



THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)  
TRUSTEE CORPORATION, ET AL.

Applicant

Respondents

Court File No. CV-16-11567-00CL

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

Proceedings commenced at Toronto

**ORDER  
(re Ancillary Matters)**

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*Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of each of the Respondents*

# Tab E

Court File No. CV-16-11567-00CL

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

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**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**

Respondents

**APPLICATION UNDER SECTION 37 OF THE  
*MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O.*  
2006, c. 29 and SECTION 101 OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990 c.*  
C.43**

**FOURTH REPORT OF THE TRUSTEE**

**JANUARY 20, 2017**



Grant Thornton Limited  
200 King Street, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5H 3T4

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Court File No. CV-16-11567-00CL

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

**BETWEEN:**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and -

**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**

Respondents

**APPLICATION UNDER SECTION 37 OF THE  
*MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006, c. 29* and SECTION 101 OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43***

**FOURTH REPORT OF THE TRUSTEE**

**JANUARY 20, 2017**

**INTRODUCTION AND BACKGROUND**

1. This report (this "**Fourth Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the court-appointed trustee (in such capacity, the "**Trustee**") of each of the 11 above-named Respondents (collectively, the "**Tier 1 Trustee Corporations**", and individually, a "**Tier 1 Trustee Corporation**"). GTL was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Commercial List Court**") made on October 27, 2016 (the "**Appointment**")

**Order**”), a copy of which is attached hereto as **Appendix “1”** (together with His Honour’s endorsement).

2. The purpose of the Trustee’s appointment (the “**Appointment**”) is to protect the interests of the investing public, who, through the Trustee, are mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the “**Developers**”). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. Detailed background information pertaining to the circumstances leading to the Trustee’s Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the “**Marfatia Affidavit**”), which was filed by the Superintendent of Financial Services (the “**Superintendent**”) in support of the Appointment.
4. In summary, the Marfatia Affidavit describes a series of 16 syndicated mortgage investments (“**SMIs**”) sold to the investing public (the “**Investors**”), in respect of which, amongst other things:
  - (i) the 16 Developers are the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;
  - (ii) the 11 Tier 1 Trustee Corporations (prior to the Appointment of the Trustee) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
  - (iii) other entities, being First Commonwealth Mortgage Corporation (“**First Commonwealth**”) and Tier 1 Mortgage Corporation (“**Tier 1 Mortgage Corp**”), were amongst those licensed mortgage brokers that promoted and sold the SMIs, and a third entity, being Tier 1 Transaction Advisory Services Inc. (“**Tier 1 Transaction**”),

was also heavily involved in the SMIs and had applied for a mortgage brokerage license.

5. The Marfatia Affidavit further describes how Mr. Raj Singh, who is simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers and the sole director, officer and shareholder of all but two of the Tier 1 Trustee Corporations, was in a clear conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMIs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.
6. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage Corp to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage Corp and Mr. Singh (amongst others) and to refuse the license surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity.
7. Finally (and without being exhaustive), the Marfatia Affidavit also discussed the Superintendent's concern that the appraisal values provided to the Investors did not reflect the value of the real property at the time of the mortgage, such that the true values may be inadequate to cover the respective SMIs but rather, reflected the value of the developed project.
8. Apart from the Marfatia Affidavit, responding affidavits to the Application were sworn by each of John Davies (a principal for 11 of the 16 Developers, which affidavit was filed in opposition to the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP ("H+H"), counsel involved in the SMI transactions). The



Appointment Order was granted notwithstanding the submissions of these stakeholders and their counsel to the Court.

9. On November 10, 2016, the Trustee filed its first report (the "**First Report**") in the context of a motion (the "**Stay Motion**") before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**"), which had been brought by 11 of the Developers for whom Mr. John Davies is the principal (the "**Davies Developers**").<sup>1</sup> In substance, the Stay Motion sought a stay of certain paragraphs of the Appointment Order pending the hearing of the Davies Developers' further motion to the Divisional Court for leave to appeal the Appointment Order (the "**Leave to Appeal Motion**"). The First Report also outlined the various degrees to which each of Mr. Davies, Mr. Singh and H+H were cooperating with the Trustee. A copy of the First Report, inclusive of all appendices, is attached as **Appendix "2"**.
10. The Stay Motion was heard by the Divisional Court on November 14, 2016, which heard submissions from counsel for each of the Superintendent, the Trustee and the Davies Developers. Also making submissions was Matthew Gottlieb from the law firm of Lax O'Sullivan Lisus Gottlieb LLP, which had been retained by Mr. Garry Levy – an Investor in certain of the SMIs and spokesperson for a group of Investors – for the purpose of, amongst other things, potentially bringing a motion to amend the Appointment Order. No such motion has been brought as of the date of this Fourth Report (and the law firm of Chaitons LLP has instead brought a motion, returnable January 24, 2017, to be appointed representative counsel on behalf of Investors who choose not to opt-out from such representation).
11. The Divisional Court dismissed the Stay Motion and ordered the Davies Developers to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). To date, the Davies Developers have not satisfied the Cost Award.

---

<sup>1</sup> The Davies Developers are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

12. The Divisional Court also held that it had no jurisdiction to hear the Leave to Appeal Motion or the underlying appeal of the Appointment Order (the "**Appeal**"), and, on consent of both the Superintendent and the Trustee, transferred the Appeal to the Court of Appeal for Ontario. The Davies Developers then advised that they would also pursue the Stay Motion at the Court of Appeal for Ontario.
13. On November 28, 2016, the Trustee filed its second report (the "**Second Report**"), which provided stakeholders with, amongst other things, an update on the challenges encountered by the Trustee in performing its mandate as a result of the actions of certain parties, including the lack of information provided by the Davies Developers. A copy of the Second Report, inclusive of all appendices, is attached as **Appendix "3"**. The Second Report was not filed in connection with a specific motion or court attendance.
14. On December 7, 2016, nine of the Davies Developers (and one of Mr. Davies' related companies) (the "**CCAA Applicants**")<sup>2</sup> sought protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Application**") and the appointment of KSV Kofman Inc. ("**KSV**") as proposed "super" monitor. On or about the same day, the Davies Developers formally withdrew both the Stay Motion and the Appeal.
15. The CCAA Application was heard by the Honourable Justice Penny on December 9, 2016 and December 14, 2016, during which period the Trustee filed its third report dated December 13, 2016 (the "**Third Report**", and together with the First Report and the Second Report, the "**Previous Reports**"). A copy of the Third Report, inclusive of all appendices, is attached as **Appendix "4"**.
16. The purpose of the Third Report was to express the Trustee's preliminary views on the CCAA Application, which were summarized therein as follows:
  16. In order [to] properly evaluate the alternatives available to the Davies Developers, the Trustee requires reporting on each [of their Projects (the "**Davies Projects**") and for such reporting to be independently verified by a third party. Absent such information, it is difficult for the Trustee to adequately report and make sound recommendations to the Investors in the Davies Projects. In addition, absent the

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<sup>2</sup> The two Davies Developers that were not CCAA Applicants were McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

requested accounting from the Davies Developers, the Trustee cannot evaluate the propriety of the Davies Developers' use of Investors funds.

17. Based on the lack of responses from the Davies Developers for the past six weeks since the Appointment Order, the Trustee is only supportive of CCAA [p]roceedings which provide additional powers to [a proposed] Court officer who can facilitate information flow to the Trustee for the benefit of Investors, and, in the interim, stop any enforcement proceedings by prior ranking mortgagees.
  18. At this point, the Trustee does not view the proposed CCAA [p]roceedings as a means to a restructuring of the CCAA Applicants. However, the proposed CCAA [p]roceedings appear to create a mechanism for the flow of information under the supervision of a Court officer with enhanced powers under the proposed order (at least in respect of the CCAA Applicants, which includes 9 of the 11 Davies Developers). While the Trustee has concerns with the various Court ordered charges proposed in the CCAA [p]roceedings and its impact on the Investors' positions, the existence of a Court officer creates independent oversight in the short term and will facilitate the transfer of information from the proposed monitor to the Trustee in respect of the CCAA Applicants.
17. A central feature of the CCAA Application was a proposed DIP loan to the CCAA Applicants in an amount of up to \$6.75 million and a corresponding charge over their property (i.e., nine of the Davies Projects) (the "**DIP Charge**"). The proposed DIP lender, Morrison Financial Mortgage Corporation ("**Morrison**"), was not prepared to advance funds unless the DIP Charge ranked ahead of the interests of the first-ranking mortgagees, which caused several mortgagees registered on title ahead of the Investors' interests to oppose the CCAA Application.
  18. On December 15, 2016, His Honour dismissed the CCAA Application, providing the written reasons attached as **Appendix "5"** (which appendix also contains an unofficial typed version of the written reasons).
  19. Had the CCAA Application been granted as proposed by the Davies Developers, the Trustee understands that part of the funding provided by Morrison was to have been used to take-out a mortgage registered in favour of Firm Capital Mortgage Fund Inc. ("**Firm Capital**") against the real property underlying one of the Davies Projects (the "**Boathaus Property**"). Immediately after the CCAA Application was dismissed, Firm Capital issued a notice of sale in respect of its mortgage on the Boathaus Property (the "**Firm Capital Boathaus Mortgage**"), which notice provides, amongst other things, that Firm Capital will sell the Boathaus Property unless approximately \$2.5 million is paid to it by January 21,

2017. A copy of the notice from Firm Capital (the "**Boathaus Notice of Sale**") is attached as **Appendix "6"**.

20. The Firm Capital Boathaus Mortgage is registered on title to the Boathaus Property ahead of the Investors' SMI (the "**Boathaus SMI**"). As discussed in the Previous Reports and later in this Fourth Report, Mr. Davies has repeatedly advised the Trustee that the Firm Capital Boathaus Mortgage will be repaid, but, despite repeated requests from the Trustee, has not provided credible evidence to support such statement. Absent intervention, a forced sale by Firm Capital appears to be the inevitable result.
21. Since the dismissal of the CCAA Application, notices of sale have been issued by mortgagees in respect of the real properties underlying two additional Davies Projects, known as Memory Care Kitchener (the "**Kitchener Property**") and McMurray (the "**McMurray Property**"), expiring February 1, 2017 and February 15, 2017, as applicable, unless the amounts of approximately \$1.1 million and \$2.0 million are paid by such dates to the respective mortgagees, 2174217 Ontario Inc. and Computershare Trust Company, copies of which notices of sale are attached collectively as **Appendix "7"**. As with the Firm Capital Boathaus Mortgage, these mortgages are registered on title ahead of the corresponding Investors' SMI.

#### **PURPOSE OF THE FOURTH REPORT**

22. The purpose of this Fourth Report is to provide the Court with information to support the Trustee's request:
  - (i) to prevent the immediate forced sale of the Boathaus Property by instead granting an order, in accordance with subsection 243(1) of the Bankruptcy and Insolvency Act (Canada) (the "**BIA**") and section 101 of the Courts of Justice Act (Ontario), appointing KSV as the court-appointed receiver and manager of the Boathaus Property (together with all the assets, undertakings and properties of the Davies Boathaus Developer acquired for or used in relation to the Boathaus Property) to market and solicit offers for the investment in, development of and/or sale of the Boathaus

Property (and such related property) pursuant to a Court-supervised process (the "**Boathaus Proceedings**"), which Boathaus Proceedings may be expanded at a later date to include the Kitchener Property, the McMurray Property and/or any other properties of the Developers, depending on how circumstances evolve moving forward; and

- (ii) for an order approving the Previous Reports and this Fourth Report and the conduct and activities of the Trustee as described therein and herein.

- 23. Copies of materials filed in these proceedings generally are available on the Trustee's website at [www.grantthornton.ca/tier1](http://www.grantthornton.ca/tier1).

#### **DISCLAIMER**

- 24. This Fourth Report has been prepared for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations. Accordingly, the reader is cautioned that this Fourth Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fourth Report for any other purpose.
- 25. In preparing this Fourth Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris of H+H, Raj Singh and John Davies. The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
- 26. All references to dollars in this Fourth Report are in Canadian currency unless otherwise noted.

## THE BOATHAUS PROPERTY AND SECURED CREDITORS

27. The Boathaus Property is owned by Scollard Development Corporation (the “**Davies Boathaus Developer**”), which is one of the Davies Developers that was a CCAA Applicant. The Davies Boathaus Developer is a separate and distinct entity from Scollard Trustee Corporation (“**STC**”), which is the Tier 1 Trustee Corporation that holds several SMIs on the Investors’ behalves, including the Boathaus SMI.
28. As indicated in the corporate profile report attached as **Appendix “8”**, the Davies Boathaus Developer’s registered office is located in Concord, Ontario, with John Davies being the sole director and officer. According to the evidence filed by John Davies in the CCAA Application, the shares of the Davies Boathaus Developer are held 50% each by: (i) Aeolian Investments Ltd. (the only shareholders of which, according to Mr. Davies’ evidence, are Mr. Davies’ wife and children); and (ii) the mother of Gregory Harris (the lawyer at H+H).
29. According to the evidence filed by Mr. Davies in the CCAA Application, the intended use for the Boathaus Property is a condominium project in respect of which there were firm sales of 214 suites as at early December 2016. The Trustee understands from Trisura Guarantee Insurance Company (“**Trisura**”) (which the Trustee understands from H+H is meant to protect deposits given by purchasers of the planned condominium units) that the deposits in respect of these sales are being held in trust by Chaitons LLP.
30. The Boathaus Property consists of three parcels of land in Whitby, Ontario, as attached as **Appendix “9”**, which parcel registers reflect the following:
  - (i) the Davies Boathaus Developer purchased the Boathaus Property on or about September 8, 2014 for \$9 million, and the Boathaus SMI was then immediately registered on title for \$13.6 million;
  - (ii) several adjustments were made to the Boathaus SMI between September 8, 2014 and October 21, 2014 to reflect that Olympia Trust Company would hold the Boathaus SMI jointly with STC to accommodate RRSP and other Investors;

- (iii) the Firm Capital Boathaus Mortgage was registered on title for \$2.35 million on December 18, 2014, and a postponement of the Boathaus SMI to the Firm Capital Boathaus Mortgage was then immediately registered on title;
- (iv) a \$3.5 million charge in favour of Trisura was registered on title on June 30, 2015 (the "**Trisura Boathaus Charge**"), and a postponement of the Boathaus SMI to the Trisura Boathaus Charge was then immediately registered on title;
- (v) a \$130,111 construction lien in favour of Leeswood Design Build Ltd. was registered on title on July 20, 2016, with an accompanying certificate on August 31, 2016 (collectively, the "**Leeswood Boathaus Construction Lien**");
- (vi) the Appointment Order was registered on title on November 3, 2016;
- (vii) two construction liens, each for \$338,768.42,<sup>3</sup> were registered on title subsequent to the Appointment Order's registration (together with the Leeswood Boathaus Construction Lien, the "**Boathaus Construction Liens**"); and
- (viii) the Davies Boathaus Developer registered a notice of application for absolute title subsequent to the Appointment Order's registration and the dismissal of the CCAA Application (the "**Boathaus Absolute Title Application**") (which the Trustee understands from H+H was done as pre-requisite to the creation of the planned condominium).

31. Copies of the Firm Capital Boathaus Mortgage (together with a notice of assignment of rents), the Trisura Boathaus Charge, the Boathaus Construction

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<sup>3</sup> One is registered in favour of IBI Group Architects (Canada) Inc. and Young + Wright / IBI Group Architects; the other is registered in favour of IBI Group Professional Services (Canada) Inc., IBI Group Architects (Canada) Inc. and Young + Wright / IBI Group Architects.

Liens and the Boathaus Absolute Title Application are attached as **Appendix “10”, Appendix “11”, Appendix “12” and Appendix “13”**.

32. Each of Firm Capital and Trisura has made one or more registration against the Davies Boathaus Developer under the *Personal Property Security Act* (Ontario) (the “**PPSA**”). The Trustee is only seeking the appointment of a receiver and manager over the Boathaus Property. A copy of the certified PPSA search results against the Davies Boathaus Developer, with currency to January 12, 2017, is attached as **Appendix “14”**.

#### **THE BOATHAUS SMI AND EVENTS OF DEFAULT**

33. Copies of the material components of the Boathaus SMI are attached collectively as **Appendix “15”**, being: (i) a loan agreement dated April 8, 2014 between the Davies Boathaus Developer, as developer/borrower, and STC, as lender on behalf of the Investors (the “**Boathaus SMI Loan Agreement**”); (ii) a syndicated mortgage participation agreement dated April 8, 2014 between STC and the Investors (the “**Boathaus SMI Participation Agreement**”); and (iii) the charge registered on title (the “**Boathaus SMI Charge**”).
34. The Boathaus SMI is for a term of three years (i.e., maturing in the ordinary course in or around September 2017), with interest payable on the first of each quarter (i.e., the first of January, April, July and October) and the possibility of a bonus interest amount on maturity.
35. According to materials provided by H+H, the Davies Boathaus Developer failed to pay the quarterly interest amount that was due under the Boathaus SMI on October 1, 2016. This constitutes an Event of Default (as defined in the Boathaus SMI Loan Agreement).
36. Since the Trustee’s Appointment over STC on October 27, 2016, additional Events of Default have occurred by the Davies Boathaus Developer, including, without limitation:
- (i) on November 8, 2016, the issuance by Firm Capital of a notice of intention to enforce security pursuant to section 244 of the BIA (the “**Initial Boathaus Notice**”) as a result of the Davies Boathaus



Developer's failure to pay certain interest owing under the Firm Capital Boathaus Mortgage;

- (ii) on December 7, 2016, the filing by the Davies Boathaus Developer of the CCAA Application;
- (iii) on December 16, 2016, the issuance by Firm Capital of the Boathaus Notice of Sale;
- (iv) on January 1, 2017, the failure of the Davies Boathaus Developer to pay, for a second quarter, the quarterly interest amount that became due under the Boathaus SMI (and the failure to repay the Firm Capital Boathaus Mortgage, which the Trustee understands was to have matured in the normal course on or about January 1, 2017).

#### **EFFORTS TO FACILITATE A SOLUTION WITH THE DAVIES BOATHAUS DEVELOPER**

- 37. As discussed in the Previous Reports, the Trustee made arrangements immediately after the Appointment Order was granted to schedule a meeting with Mr. Davies to discuss and obtain information regarding several urgent matters, including, without limitation, the pending maturity of the Firm Capital Boathaus Mortgage.
- 38. As discussed in the First Report, the meeting with Mr. Davies was postponed on several occasions at Mr. Davies' request, and the Trustee therefore put an initial information request in writing to Mr. Davies regarding the various Davies Projects (the "**Requested Information**").
- 39. As discussed in the Second Report, a meeting ultimately occurred with Mr. Davies (as well as his colleague, Walter Thompson, and counsel) on November 10, 2016 (the "**November 10 Meeting**"), during which a significant portion of time was spent discussing the Boathaus Property. It was at the November 10 Meeting that the Trustee first learned from Mr. Davies of the existence of the Initial Boathaus Notice, and that the Davies Boathaus Developer was in receipt of two potential financing sources in respect of the Boathaus Property (the "**Potential Boathaus Financing**"), as represented by a letter of intent from

DUCA Financial Services dated August 16, 2016 and accepted August 24, 2016 and a commitment letter from Centurion Mortgage Capital Corporation dated October 17, 2016 and accepted October 19, 2016. Apart from the two letters, both of which were conditional on the delivery of certain materials by and confirmations from the Davies Boathaus Developer, Mr. Davies did not provide the Trustee with any material information in respect of the Potential Boathaus Financing, but asked that the Trustee agree to postpone the Boathaus SMI to the Potential Boathaus Financing (the "**Proposed Boathaus Postponement**").

40. In light of the urgency regarding the Boathaus Property and Mr. Davies' request regarding the Proposed Boathaus Postponement, the Trustee recommended at the November 10 Meeting that Mr. Davies prioritize forwarding to the Trustee the Requested Information relating to the Boathaus Property, such that the Trustee would be in a position to assess the Proposed Boathaus Postponement.
41. In particular, by way of letter dated November 16, 2016 (the "**November 16 Letter**"), the Trustee asked that Mr. Davies confirm he had provided the proposed take-out lender with any and all documents and information necessary to obtain the Potential Boathaus Financing (other than the Proposed Boathaus Postponement) and provide the Trustee with a copy of such documents and information, thereby enabling the Trustee to call an Investor meeting prior to the maturity of the Firm Capital Boathaus Mortgage to: (i) share the material provided by Mr. Davies; and (ii) solicit and tabulate the Investors' input as to whether they desire to proceed with the Proposed Boathaus Postponement. No such confirmation, information or documentation was provided to the Trustee. A copy of the November 16 Letter is attached as **Appendix "16"**.
42. Rather than providing the Trustee with the necessary materials to take an informed position or make an informed recommendation to the Investors regarding the Proposed Boathaus Postponement or any other steps in regards to the Boathaus Property, the Davies Boathaus Developer and the other CCAA Applicants elected to proceed with the CCAA Application. As set out earlier in this Fourth Report, part of the DIP funding to have been provided by Morrison under the CCAA Application was to have been used to take-out the Firm Capital Boathaus Mortgage.

43. Following the dismissal of the CCAA Application and the issuance of the Boathaus Notice of Sale, the Trustee wrote to the Investors of the Boathaus SMI to apprise them of the situation and advise that, absent one or more Investors being able to raise approximately \$2.5 million by January 21, 2017, the Trustee does not have access to a pool of funds to take-out the Firm Capital Boathaus Mortgage. A copy of the Trustee's letter dated December 21, 2016 to the Investors of the Boathaus SMI is attached as **Appendix "17"**.
44. Contemporaneously, the Trustee once again enquired with Mr. Davies as to his intentions regarding the Davies Projects generally and the Boathaus Project specifically. On January 4, 2017, Mr. Thompson advised that Morrison would advance DIP financing on the Boathaus Property alone, provided that it understand the path forward for the balance of the CCAA Applicants. On January 6, 2017, Mr. Thompson clarified that Morrison would not be prepared to lend on the Boathaus Property alone "*without a clear resolution on the whole situation.*"
45. On January 11, 2017, the Trustee organized a meeting between the Davies Boathaus Developer and Dave Martino, Chief Executive Officer of Landmark Capital Inc. ("**Landmark**"), a mortgage brokerage firm that had placed funds in the Davies Developers generally, including the Davies Boathaus Developer. Prior to the meeting, Landmark had indicated to the Trustee that it might be interested in purchasing Boathaus from the Davies Boathaus Developer. During that meeting, and independent of any potential role for Landmark moving forward, Mr. Davies reiterated that the Firm Capital Boathaus Mortgage would be repaid, but did not provide any concrete details.
46. On January 12, 2017, the Trustee repeated its written request for information as to how the Davies Boathaus Developer planned on repaying the Firm Capital Boathaus Mortgage, repeating the same questions that were posed to Mr. Davies in the November 16 Letter and that had gone unanswered (the "**January 12 Email**"). A copy of the January 12 Email is attached as **Appendix "18"**.
47. As of the date of this Fourth Report, the questions posed by the Trustee in the November 16 Letter and reiterated in the January 12 Email remain outstanding,

the Trustee has no comfort or information regarding the Davies Boathaus Developer's ability or willingness to repay the Firm Capital Boathaus Mortgage and the deadline for doing so is about to expire.

48. At this stage, the Trustee considers that it has exhausted any and all reasonable efforts to allow the Davies Boathaus Developer to implement its own resolution to deal with its liquidity problems. Rather than allow the Boathaus Property to be sold outside a formal Court process, which otherwise appears to be imminent, the Trustee believes that its only reasonable and prudent option under the circumstances is to have a receiver and manager implement a formal Court-supervised marketing process for a potential investment in, development of and/or sale of the Boathaus Property, with the hope of generating a better recovery to the Investors than would be available by a private forced sale.
49. As at January 1, 2017, the Davies Boathaus Developer was indebted under the terms of the Boathaus SMI in the aggregate sum of \$14,149,577.90 plus accruing interest and professional fees (collectively, the "**Boathaus SMI Indebtedness**"). As the Boathaus Property was purchased for \$9 million in 2014 and the encumbrances registered on title ahead of the Boathaus SMI are for materially less than this amount, the Boathaus SMI appears to be the fulcrum mortgage.
50. The Trustee expects KSV, in its capacity as the receiver and manager, to receive a binding commitment for financing in short order (and likely before the return date of this motion) which would be sufficient to take-out the Firm Capital Boathaus Mortgage and fund part of the administration of the Boathaus Proceedings.
51. Accordingly, on January 17, 2017, the Trustee made formal written demand on the Davies Boathaus Developer for the Boathaus SMI Indebtedness, which was accompanied by a notice of intention to enforce security pursuant to subsection 244(1) of the BIA, copies of which are collectively attached as **Appendix "19"**.
52. As of the date of this Fourth Report, the Davies Boathaus Developer has failed to make payment in accordance with the demands, make alternative arrangements

acceptable to the Trustee or initiate any fresh insolvency filings. The Trustee also understands that the Firm Capital Boathaus Mortgage remains outstanding.

53. The Trustee therefore considers it reasonable and prudent to commence the proposed Boathaus Proceedings in an effort to recover the Boathaus SMI Indebtedness. While it is generally the Trustee's intention to seek guidance and direction from the Investors (or from Chaitons LLP, pending the outcome of its motion to be appointed as representative counsel), the Trustee does not believe that there is any other viable and economically-beneficial option at the present time for the Boathaus SMI other than the proposed Boathaus Proceedings, and a decision needs to be made imminently.
54. In the circumstances set out above, the Trustee believes that it is just and equitable that the proposed Boathaus Proceedings be ordered by this Court. It is the Trustee's view that the proposed Boathaus Proceedings are necessary for the protection of the Investors of the Boathaus SMI and possibly other stakeholders, including the purchasers who have deposited funds to purchase condominium units on the Boathaus Property. The Trustee believes that the proposed Boathaus Proceedings would enhance the prospect of recovery by the Trustee for the Investors and protect all stakeholders.
55. The Trustee recommends that KSV be appointed as the receiver and manager of the Boathaus Property. KSV is licensed to act in this capacity and is familiar with the Boathaus Property and the Davies Boathaus Developer's arrangements with its creditors through its contemplated role as the proposed "super" monitor in the CCAA Application. It is the Trustee's view that KSV's familiarity with the Boathaus Property and the Davies Boathaus Developer will result in efficiencies for the benefit of the Investors. Furthermore, KSV has experience acting in a similar mandate involving a developer through its role as the monitor of the Urbancorp group of companies' proceedings under the *Companies' Creditors Arrangement Act*.
56. KSV has consented to act as the receiver and manager of the Boathaus Property should the Court so appoint it. A copy of KSV's consent is attached as **Appendix "20"**.

57. In order to maintain independence between the Trustee and the proposed receiver and manager of the Boathaus Property, and in order to maximize procedural efficiency in both the present proceedings and the proposed Boathaus Proceedings, the Trustee recommends that the proposed Boathaus Proceedings be assigned a new Court file number and proceed separately from the present proceedings.

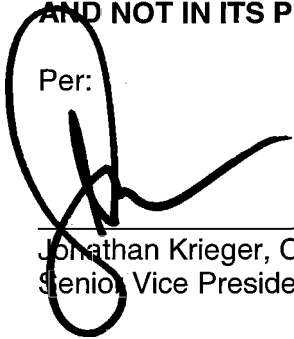
**CONCLUSION AND RECOMMENDED RELIEF**

58. In light of the foregoing, the Trustee respectfully recommends that the Court issue the Orders in the form attached to the Trustee's motion record.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,  
IN ITS CAPACITY AS COURT-APPOINTED  
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS  
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Jonathan Krieger, CPA, CA, CIRP, LIT  
Senior Vice President

# TAB 1

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
JUSTICE NEWBOULD

)  
)  
)

THURSDAY, THE 27<sup>TH</sup> DAY  
OF OCTOBER, 2016

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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

Respondents

APPLICATION UNDER SECTION 37 OF THE  
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006, c.  
29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43

APPOINTMENT ORDER

THIS APPLICATION, made by The Superintendent of Financial Services (the "Superintendent"), for an Order, *inter alia*, pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the "MBLAA"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Grant Thornton Limited ("GTL") as trustee (in such capacity, the "Trustee"), without security, of all of the assets, undertakings and properties of 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 Trust Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the "**Respondents**"), was heard this day at 330 University Avenue, Toronto, Ontario;

**ON READING** the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 and the exhibits thereto (the "**Supporting Affidavit**") and on reading the Affidavit of Mr. John Davies sworn October 26, 2016 and the Affidavit of Mr. Gregory Harris sworn October 26, 2016 and the consent of GTL, and on hearing the submissions of counsel for the Superintendent, counsel for certain of the developers, counsel for Harris + Harris, LLP and counsel for Tier 1 Advisory Transaction Advisory Services Inc. and Mr. Singh, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Eunice Baltkois sworn October 20, 2016, filed;

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 37 of the MBLAA, GTL is hereby appointed Trustee, without security, of all of the assets, undertakings and properties of the Respondents, including, without limitation, all of the assets held in trust or required to be held in trust by the Respondents, their counsel, agents and/or assignees on behalf of syndicated mortgage investors (collectively, the "**Property**"), which Property, for greater certainty, includes any and all real property charges in favour of the Respondents (the "**Real Property Charges**"), including, without limitation, any and all monetary and non-monetary entitlements in respect to the assets and values thereunder.

#### **TRUSTEE'S POWERS**

3. **THIS COURT ORDERS** that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the holding of mortgage security in trust on behalf of syndicated mortgage investors, the administering of the mortgages, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the businesses of the Respondents, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of each of the Respondents;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of each of the Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to each of the Respondents and to exercise all remedies of each of the Respondents in collecting such monies, including, without limitation, to enforce any security held by each of the Respondents, including, without limitation, such security held on behalf of syndicated mortgage investors;
- (g) to settle, extend or compromise any indebtedness owing to each of the Respondents;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Trustee's name or in the name and on behalf of the Respondents, or any of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Respondents, the Property or the Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in such case notice under subsection 63(4) of the *Ontario Personal Property Security Act* or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required, and in such case the *Ontario Bulk Sales Act* shall not apply;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property and the Trustee's mandate, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of

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and, if thought desirable by the Trustee, in the name of the Respondents, or any of them;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which each of the Respondents may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondents, and without interference from any other Person.

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

4. **THIS COURT ORDERS** that: (i) the Respondents; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Trustee, and shall deliver all such Property to the Trustee upon the Trustee's request.

5. **THIS COURT ORDERS** that, pursuant to and without limiting the generality of paragraph 4 of this Order, all Persons, including, without limitation, Harris + Harris LLP ("**H&H**"), shall, unless otherwise instructed by the Trustee: (i) deliver to the Trustee (or in the case of RRSP or other registered funds administered by Olympia Trust Company ("**OTC**") not release to any Person without further Order of this Court) any and all monies held in trust that are related to any of the Respondents or their businesses (collectively, the "**Trust Funds**"), which Trust Funds, for greater certainty, include any and all monies in any H&H or OTC account that are purported to be held in trust for the investors in or beneficiaries under any of the Real Property