

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

**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

AND

**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**

**MOTION RECORD  
(Returnable April 28, 2017)**

**Volume 1 of 5**

April 18, 2017

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

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

**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

AND

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

**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**

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

**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

AND

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

**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**

**NOTICE OF MOTION  
(returnable April 28, 2017)**

Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of the named Respondents in Court File No. CV-16-11567-00CL (the

“**Tier 1 Trustee Corporations**”), will make a motion to a judge presiding over the Commercial List on Friday, April 28, 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 Sixth Report of the Trustee dated April 18, 2017 (the “**Sixth Report**”) and the activities of the Trustee set out therein;
  - (c) 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**”), amending and restating the Order of the Honourable Justice Wilton-Siegel dated February 2, 2017 regarding the Boathaus Proceedings (as defined herein) to include the real property registered on title as being owned by Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc. and Textbook (555 Princess Street) Inc. (collectively, the “**Additional Developers**”);
  - (d) an Order compelling John Davies and the eleven named Respondents for whom John Davies is the principal (the “**Davies Developers**”) to immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers;
  - (e) an Order sealing the confidential appendix to the Sixth Report (the “**Confidential Appendix**”);
  - (f) an Order approving the fees and disbursements of the Trustee and its counsel and an allocation of such fees and disbursements; and

- (g) 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 Tier 1 Trustee Corporations;
- (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 Tier 1 Trustee Corporations (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 Tier 1 Trustee Corporations are distinct entities from the Developers;
- (e) the circumstances leading to the Trustee’s Appointment are summarized in the Sixth Report, 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) in order to prevent the immediate forced sale of the real property owned by one of the Developers, being Scollard Development Corporation (the “**Boathaus Developer**”), the Trustee brought a motion to have KSV Kofman Inc. (“**KSV**”) appointed by the Court as receiver and manager of the real property owned by the Boathaus Developer (in such capacity, the “**Boathaus Receiver**”) to, amongst other things, market and solicit offers for the investment in, development of and/or sale of the Boathaus Property (the “**Boathaus Proceedings**”);

- (g) pursuant to the Order of the Honourable Justice Wilton-Siegel dated February 2, 2017, KSV was appointed as the Boathaus Receiver in respect of the Boathaus Property;
- (h) for the reasons set out in detail in the Sixth Report, including, without limitation, the uncured defaults committed by the Additional Developers and the transferring of funds from the Boathaus Developer that have been reported by the Boathaus Receiver, it is the Trustee's view that the Boathaus Proceedings should be expanded to include the real property owned by the Additional Developers (the "**Additional Property**") such that, amongst other things, the Boathaus Receiver may market and solicit offers for the investment in, development of and/or sale of the Additional Property;
- (i) the Trustee has secured financing to replace any mortgages on the Additional Property that are registered on title in priority to the mortgages held by the Tier 1 Trustee Corporations;
- (j) the Trustee has filed the Sixth Report 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;
- (k) the Confidential Appendix contains certain commercially-sensitive information, the release of which could prejudice the stakeholders of the Tier 1 Trustee Corporations, the Boathaus Developer and the Additional Developers;
- (l) the Trustee and its counsel, Aird & Berlis LLP, have accrued fees and expenses in their capacity as Trustee and counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Appointment Order;
- (m) the facts set out in the Sixth Report;
- (n) subsection 243(1) of the BIA;
- (o) section 101 of the CJA;

- (p) the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario);
- (q) rules 1.04, 2.03, 3.02, 37 and 41 of the *Rules of Civil Procedure* (Ontario); and
- (r) 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 Sixth Report, inclusive of the fee affidavits and allocation tables filed on behalf of the Trustee and its counsel;
- (b) the Second Report of the Boathaus Receiver dated April 18, 2017; and
- (c) such further and other material as counsel may submit and this Court may permit.

Date: April 18, 2017

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*Lawyers for Grant Thornton Limited, in its  
capacity as court-appointed trustee of each  
of the Tier 1 Trustee Corporations*

**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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(returnable April 28, 2017)**

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*Lawyers for Grant Thornton Limited, in its capacity as the court-  
appointed trustee of each of the Tier 1 Trustee Corporations*



# Tab B

Court File No. CV-16-11567-00CL  
Court File No. CV-17-11689-00CL

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

THE HONOURABLE ) FRIDAY, THE 28<sup>TH</sup>  
 )  
JUSTICE ) DAY OF APRIL, 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

AND

**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**

**ORDER**

**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 named Respondents in Court File No. CV-16-11567-00CL (the “Tier 1 Proceedings”), for an Order, *inter alia*: (i)

approving the Sixth Report of the Trustee dated April 18, 2017 (the "**Sixth Report**") and the activities of the Trustee set out in therein; (ii) amending and restating the Order (the "**Receivership Order**") of the Honourable Justice Wilton-Siegel dated February 2, 2017 regarding the proceedings bearing Court File No. CV-17-11689-00CL (the "**Boathaus Proceedings**"); (iii) compelling John Davies and the eleven named Respondents for whom John Davies is the principal (the "**Davies Developers**") to immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers; (iv) sealing the confidential appendix to the Sixth Report (the "**Confidential Appendix**"); and (v) approving the fees and disbursements of the Trustee and its counsel and an allocation of such fees and disbursements, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Sixth Report, including the fee affidavits therein (the "**Fee Affidavits**"), the Second Report of KSV Kofman Inc. ("**KSV**"), in its capacity as court-appointed receiver and manager in the Boathaus Proceedings (in such capacity, the "**Receiver**") dated April 18, 2017, and the consent of KSV, and on hearing the submissions of counsel for the Trustee, counsel for the Receiver, representative counsel for the investors in the Tier 1 Proceedings 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 Timothy Jones sworn April 18, 2017, filed,

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 Sixth Report and the activities of the Trustee described therein be and are hereby approved.
3. **THIS COURT ORDERS** that, unless otherwise stated in this Order, all capitalized terms in this Order be and are hereby defined as they are in the Receivership Order of the Honourable Justice Wilton-Siegel dated February 2, 2017 in the Boathaus Proceedings.
4. **THIS COURT ORDERS** that the Receivership Order be and is hereby amended and restated in the form attached hereto as **Schedule "A"**.

5. **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 the security of the Respondents named in the Tier 1 Proceedings (the “**Tier 1 Trustee Corporations**”) or, if not so provided by the Tier 1 Trustee Corporations’ 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.

6. **THIS COURT ORDERS** that John Davies and the Davies Developers shall immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers.

7. **THIS COURT ORDERS** that the Confidential Appendix be and is hereby sealed until further Order of this Court.

8. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel and an allocation of such fees and disbursements, as described in the Sixth Report and as set out in the Fee Affidavits, be and are hereby approved.

9. **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, the Trustee and their respective 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 and the Trustee, as officers of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver, the Trustee and their respective agents in carrying out the terms of this Order.

---

**SCHEDULE "A"**

Attached.

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

THE HONOURABLE  
JUSTICE

)  
)  
)

FRIDAY, THE 28<sup>TH</sup>  
DAY OF APRIL, 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**

**AMENDED AND RESTATED 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**"), MC Trustee (Kitchener) Ltd., 2223974 Ontario Limited, Textbook Student Suites (525 Princess Street) Trustee Corporation, and Textbook Student Suites (555 Princess Street) Trustee Corporation 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 "**Original Debtor**") and Memory Care Investments (Kitchener) Ltd. ("**MC Kitchener**"), Memory Care Investments (Oakville) Ltd. ("**MC Oakville**"), 1703858 Ontario Inc. ("**MC Burlington**"), Legacy Lane Investments Ltd. ("**Legacy Lane**"), Textbook (525 Princess Street) Inc. ("**525**"), and Textbook (555 Princess Street) Inc. ("**555**", and together with MC Kitchener, MC Oakville, MC Burlington, Legacy Lane and 525, the "**Additional Debtors**", and together with the Original Debtor, the "**Debtors**") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties of the Debtors acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), was heard January 31, 2017, February 1, 2017, February 2, 2017 and this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fourth Report of the Trustee dated January 20, 2017 and the appendices thereto (the "**Fourth Report**"), including, without limitation, the consent of KSV dated January 19, 2017 to act as the Receiver, the Supplement to the Fourth Report dated January 26, 2017 and the appendices thereto (the "**Fourth Report Supplement**"), the Report of the proposed Receiver dated January 30, 2017, the Sixth Report of the Trustee dated April 18, 2017, including, without limitation, the consent of KSV dated April 18, 2017, and the Second Report of the Receiver dated April 18, 2017, 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 affidavits of service of Eunice Baltkois sworn January 20, 2017 and January 26, 2017 and the affidavit of service of Timothy Jones sworn April 18, 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.

## **EFFECTIVENESS**

2. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, the provisions in this Order that relate to any of the Additional Debtors or any Property owned by any of the Additional Debtors shall only be effective as of April 28, 2017.

## **APPOINTMENT**

3. **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**

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

- a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to manage, operate, and carry on the business of the Debtors 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 Debtors 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 Debtors 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 Debtors in respect of the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- g) to settle, extend or compromise any indebtedness owing to the Debtors 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 any 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 any 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) subject to paragraphs 37 and 38 of this Order with respect to the Original Debtor and the Property owned by the Original Debtor only, 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;

- 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 any Debtor;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of any 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 any Debtor may have in respect to any of 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 Debtors, and without interference from any other Person.

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

5. **THIS COURT ORDERS** that (i) the Debtors, (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 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.

6. **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 6 or in paragraph 7 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.

7. **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**

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

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of any Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

10. **THIS COURT ORDERS** that nothing in this Order shall prevent Trisura Guarantee Insurance Company ("**Trisura**") from commencing one or more Proceeding(s) against the Original Debtor and Trisura's other indemnitors (excluding the Original Debtor, the "**Indemnitors**") where the commencement of such Proceeding(s) against the Original Debtor is required in order to name the Indemnitors in such Proceeding(s), provided, however, that neither Trisura nor any of the Indemnitors shall be permitted to continue such Proceeding(s) against the Original Debtor or the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or any Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or any 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**

12. **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 any Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with any 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 Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

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

14. **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 (except deposits from purchasers in respect of sales of condominium units relating to the Original Debtor, which shall be delivered to Chaitons LLP to be held and form part of the Deposits (as defined in paragraph 38 of this Order)), 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**

15. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the applicable 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**

16. **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 applicable Debtor(s), and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. **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**

18. **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**

19. **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 all the Property except the Deposits (as defined herein), 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 all the Property except the Deposits 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.

20. **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.

21. **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**

22. **THIS COURT ORDERS** that 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) by way of the Commitment Letter (as defined in the Fourth Report Supplement) (the "**Scollard Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of the Original Debtor in favour of Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), which Scollard Borrowings shall benefit from a fixed and specific charge on the Property of the Original Debtor 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, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and any special priority lien under section 78 of the *Construction Lien Act* in favour of Leeswood Design Build Ltd. (not to exceed \$58,000) that may be determined to exist by the Receiver (the "**Lien**"). If the Lien is determined to exist by the Receiver, the Receiver shall discharge the Lien from the proceeds (not to exceed \$58,000) generated from the Property owned by the Original Debtor. The Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.



23. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$1,357,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Kitchener Commitment Letter (as defined in the Sixth Report) (the "**MC Kitchener Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Kitchener in favour of 2174217 Ontario Inc. ("217"), which MC Kitchener Borrowings shall benefit from a fixed and specific charge on the Property of MC Kitchener 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, and the MC Kitchener Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

24. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$1,632,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Oakville Commitment Letter (as defined in the Sixth Report) (the "**MC Oakville Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Oakville in favour of 217, which MC Oakville Borrowings shall benefit from a fixed and specific charge on the Property of MC Oakville 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, and the MC Oakville Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

25. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$1,643,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Burlington Commitment Letter (as defined in the Sixth Report) (the "**MC Burlington Borrowings**", and together the MC Kitchener Borrowings and the MC Oakville Borrowings, the "**MC Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Burlington in favour of 217,

which MC Burlington Borrowings shall benefit from a fixed and specific charge on the Property of MC Burlington 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, and the MC Burlington Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

26. **THIS COURT ORDERS** that no 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 applicable Real Property.

27. **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 Scollard Borrowings, the MC Kitchener Borrowings, the MC Oakville Borrowings, and the MC Burlington Borrowings.

28. **THIS COURT ORDERS** that any additional monies from time to time borrowed by the Receiver pursuant to 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 but immediately subordinate to the borrowings made pursuant to this Order, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

29. **THIS COURT ORDERS** that all amounts owing under and secured by the Firm Capital Boathaus Mortgage (as defined in the Fourth Report) in favour of Firm Capital shall be repaid in full by the Receiver within two (2) business days of the date of this Order from the proceeds of the Scollard Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of Firm Capital in respect of the Firm Capital Boathaus Mortgage in the interim period from the making of this Order to the time such mortgage has been repaid in full (the "**Interim Period**"), provided, however, that Firm Capital

shall not enforce any of its rights or remedies during the Interim Period in respect of the Firm Capital Boathaus Mortgage without the consent of the Receiver or approval of this Court.

30. **THIS COURT ORDERS** that all amounts owing under and secured by the 217 Memory Care Mortgages (as defined in the Sixth Report) in favour of 217 shall be repaid in full by the Receiver within seven (7) business days following April 28, 2017 from the proceeds of the MC Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of 217 in respect of the 217 Memory Care Mortgages in the interim period from the making of this Order to the time such mortgages have been repaid in full (the "**217 Interim Period**"), provided, however, that 217 shall not enforce any of its rights or remedies during the 217 Interim Period in respect of the 217 Memory Care Mortgages without the written consent of the Receiver or approval of this Court.

#### **SERVICE AND NOTICE**

31. **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 for each Debtor in accordance with the Protocol with the following URL: <http://www.ksvadvisory.com/insolvency-cases/>.

32. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the 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**

33. **THIS COURT ORDERS AND DIRECTS** that the within proceedings in respect of the Debtors, 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 34 of this Order and proceed separately from the proceedings in respect of STC, the Trustee and the assets, properties and undertakings of STC.

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

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

35. **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.

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

37. **THIS COURT ORDERS** that nothing in this Order or the BIA shall now or in the future grant to the Receiver, or be deemed to grant to the Receiver, or create in favour of any Person (including, without limitation, any potential future purchaser of the Property or the Original Debtor (the "**Future Purchaser**")), any right, title, entitlement, benefit or interest in or to Tarion Bond Nos. TDS0990169 or TDS0990142 issued, respectively, by Everest Insurance Company of Canada ("**Everest**") and Trisura (collectively, the "**Tarion Bonds**"). For greater certainty, neither the Receiver nor any Future Purchaser shall in any way be entitled to the benefit of or rely on the Tarion Bonds for any purpose whatsoever.

38. **THIS COURT ORDERS** that no Future Purchaser of the Property of the Original Debtor or the Original Debtor shall, without making arrangements to extinguish any liability that Trisura and Everest may have in respect of the Tarion Bonds, be entitled to any right, title, entitlement, benefit or interest, in or to the Property of the Original Debtor, the Original Debtor or any pre-sale deposits held in trust by Chaitons LLP and paid by purchasers of the condominium units in respect of pre-sales at the Real Property related to the Tarion Bonds (the "**Deposits**").

39. **THIS COURT ORDERS AND DIRECTS** that Trisura shall be paid, in full, for any and all losses, damages, liabilities, costs and expenses owed to it by the Original Debtor or to any other Indemnitor pursuant to the Tarion Bonds or Indemnity Agreements defined below from any proceeds of sale resulting from any Transaction (as defined below) in respect of the Property of the Original Debtor.

40. **THIS COURT ORDERS** that the Receiver is precluded from consummating any Transaction (as defined below) that does not:

- (a) fully and finally discharge Trisura and Everest from any and all liability related to the Tarion Bonds; and
- (b) fully indemnify Trisura under the Indemnity Agreements dated October 19, 2015 and May 11, 2015 (the "**Indemnity Agreements**").

41. The term "**Transaction**" means any arrangement that provides for the sale of, development of or investment in all or part of the Property of the Original Debtor.

42. **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.

43. **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.

44. **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 applicable Properties with such priority and at such time as this Court may determine.

45. **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);
- (c) 26484-0007 (LT);
- (d) 22507-0109 (LT);
- (e) 24821-0207 (LT);
- (f) 07074-0452 (LT);
- (g) 48079-0670 (LT);
- (h) 36071-0115 (LT), 36071-0116 (LT), 36071-0117 (LT) and 36071-0118 (LT); and
- (i) 36072-0135 (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, among other property, certain real property registered on title as being owned by [applicable Debtor] (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 Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 28<sup>th</sup> day of April 2017 (the "**Order**") made in a motion assigned to Court file number CV-17-11689-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum 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 reasonable and documented fees.

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 except for the Deposits (as defined in the Order), if applicable, 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:

<\*>.

**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

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

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

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

**Proceedings commenced at Toronto**

**ORDER**

**AIRD & BERLIS LLP**  
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*Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of each of the Tier 1 Trustee Corporations*

# Tab C

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) THURSDAY~~FRIDAY~~, THE 2ND~~28~~<sup>TH</sup>  
MR. JUSTICE WILTON SIEGEL ) DAY OF ~~FEBRUARY~~APRIL, 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*

**AMENDED AND RESTATED 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"), MC Trustee (Kitchener) Ltd., 2223974 Ontario Limited, Textbook Student Suites (525 Princess Street) Trustee Corporation, and Textbook Student Suites (555 Princess Street) Trustee Corporation 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~~**Original Debtor**") and Memory Care Investments (Kitchener) Ltd. ("MC Kitchener"), Memory Care Investments (Oakville) Ltd. ("MC Oakville"), 1703858 Ontario Inc. ("MC Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (525 Princess Street) Inc. ("525"), and Textbook (555 Princess Street) Inc. ("555"), and together with MC Kitchener, MC Oakville, MC Burlington, Legacy Lane and 525, the "Additional Debtors", and together with the Original Debtor, the "Debtors") and that is listed on Schedule "A" hereto (collectively, the "Real Property") and of all the assets, undertakings and properties of the ~~Debtor~~**Debtors** acquired for or used in relation to the Real Property (together with the Real Property, the "Property"), was heard January 31, 2017, February 1, 2017, February 2, 2017 and this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fourth Report of the Trustee dated January 20, 2017 and the appendices thereto (the "**Fourth Report**"), including, without limitation, the consent of KSV dated January 19, 2017 to act as the Receiver, the Supplement to the Fourth Report dated January 26, 2017 and the appendices thereto (the "**Fourth Report Supplement**")~~and~~, the Report of the proposed Receiver dated January 30, 2017, the Sixth Report of the Trustee dated April 18, 2017, including, without limitation, the consent of KSV dated April 18, 2017, and the Second Report of the Receiver dated April 18, 2017, 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 affidavits of service of Eunice Baltkois sworn January 20, 2017 and January 26, 2017 and the affidavit of service of Timothy Jones sworn April 18, 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.

**EFFECTIVENESS**

2. ~~**THIS COURT ORDERS** that, notwithstanding anything else contained herein, the provisions in this Order that relate to any of the Additional Debtors or any Property owned by any of the Additional Debtors shall only be effective as of April 28, 2017.~~

**APPOINTMENT**

3. ~~**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**

4. ~~**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~~Debtors 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~~Debtors 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~~Debtors 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~~Debtors in respect of the Property and to exercise all remedies of the ~~Debtor~~Debtors in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Debtors;
- g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Debtors 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 any~~any 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 any~~any 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) subject to paragraphs ~~3337~~ and ~~3438~~ of this Order with respect to the Original Debtor and the Property owned by the Original Debtor only, 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~~any Debtor;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of ~~the~~any 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~~any Debtor may have in respect to any of 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~~Debtors, and without interference from any other Person.

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

5. ~~4.~~ **THIS COURT ORDERS** that (i) the ~~Debtor~~Debtors, (ii) all of ~~its~~their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on ~~its~~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 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.

6. ~~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~~6 or in paragraph ~~6~~7 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.

7. ~~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**

8. ~~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~~DEBTORS OR THE PROPERTY**

9. ~~8.~~ **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, no Proceeding against or in respect of the ~~Debtor~~Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of ~~the~~any Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

10. **THIS COURT ORDERS** that nothing in this Order shall prevent Trisura Guarantee Insurance Company ("Trisura") from commencing one or more Proceeding(s) against the Original Debtor and Trisura's other indemnitors (excluding the Original Debtor, the "Indemnitors") where the commencement of such Proceeding(s) against the Original Debtor is required in order to name the Indemnitors in such Proceeding(s), provided, however, that neither Trisura nor any of the Indemnitors shall be permitted to continue such Proceeding(s) against the Original Debtor or the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. ~~9.~~ **THIS COURT ORDERS** that, ~~subject to paragraph 10 of this Order,~~ all rights and remedies against the ~~Debtor~~Debtors, the Receiver or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided

however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or ~~the~~any Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or ~~the~~any 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.

~~10. THIS COURT ORDERS that nothing in this Order shall prevent Trisura Guarantee Insurance Company ("Trisura") from commencing one or more Proceeding(s) against the Debtor and Trisura's other indemnitors (excluding the Debtor, the "Indemnitors") where the commencement of such Proceeding(s) against the Debtor is required in order to name the Indemnitors in such Proceeding(s), provided, however, that neither Trisura nor any of the Indemnitors shall be permitted to continue such Proceeding(s) against the Debtor or the Receiver.~~

#### **NO INTERFERENCE WITH THE RECEIVER**

~~11. THIS COURT ORDERS~~ 12. 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~~any Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

~~12. THIS COURT ORDERS~~ 13. that all Persons having oral or written agreements with ~~the~~any 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 ~~Debtors'~~ current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment

practices of the ~~Debtor~~Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

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

14. ~~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 (except deposits from purchasers in respect of sales of condominium units relating to the Original Debtor, which shall be delivered to Chaitons LLP to be held and form part of the Deposits (as defined in paragraph ~~3438~~ of this Order)), 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**

15. ~~14.~~ **THIS COURT ORDERS** that all employees of the ~~Debtor~~Debtors shall remain the employees of the ~~Debtor~~Debtors until such time as the Receiver, on the applicable 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**

16. ~~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 applicable Debtor(s), and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17 ~~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**

18 ~~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

19. ~~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 all the Property except the Deposits (as defined herein), 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 all the Property except the Deposits 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.

20. ~~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.

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

## FUNDING OF THE RECEIVERSHIP

22. ~~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 the sum of up to \$3,500,000 (or such greater amount as this Court may by further Order authorize) (the "**Authorized Sum**") 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 except for the Deposits shall be and is hereby charged~~

~~by way of~~ by way of the Commitment Letter (as defined in the Fourth Report Supplement) (the "Scollard Borrowings") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of the Original Debtor in favour of Firm Capital Mortgage Fund Inc. ("Firm Capital"), which Scollard Borrowings shall benefit from a fixed and specific charge (the "Receiver's Borrowings Charge") on the Property of the Original Debtor 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, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and any special priority lien under section 78 of the Construction Lien Act in favour of Leeswood Design Build Ltd. (not to exceed \$58,000) that may be determined to exist by the Receiver (the "Lien"). If the Lien is determined to exist by the Receiver, the Receiver shall discharge the Lien from the proceeds (not to exceed \$58,000) generated from the Property owned by the Original Debtor. The Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

~~23. 22. THIS COURT ORDERS that, without in any way limiting the generality of paragraph 21 of this Order, the Receiver be at liberty and is hereby empowered to borrow the Authorized Sumsum of up to \$1,357,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Kitchener Commitment Letter (as defined in the FourthSixth Report Supplement) (the "IdentifiedMC Kitchener Borrowings") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Kitchener in favour of Firm Capital Mortgage Fund2174217 Ontario Inc. ("Firm Capital""217"), which IdentifiedMC Kitchener Borrowings shall benefit from a fixed and specific charge on the Property of MC Kitchener 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 Borrowings Charge on the same terms and conditions as provided in paragraph 21 of this Order, and which Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and the MC Kitchener Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.~~



24. THIS COURT ORDERS that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$1,632,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Oakville Commitment Letter (as defined in the Sixth Report) (the "MC Oakville Borrowings") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Oakville in favour of 217, which MC Oakville Borrowings shall benefit from a fixed and specific charge on the Property of MC Oakville 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, and the MC Oakville Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

25. THIS COURT ORDERS that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$1,643,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Burlington Commitment Letter (as defined in the Sixth Report) (the "MC Burlington Borrowings", and together the MC Kitchener Borrowings and the MC Oakville Borrowings, the "MC Borrowings") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Burlington in favour of 217, which MC Burlington Borrowings shall benefit from a fixed and specific charge on the Property of MC Burlington 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, and the MC Burlington Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

26. ~~23.~~ 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 applicable Real Property.

27. ~~24.~~ **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~~Scollard Borrowings, the MC Kitchener Borrowings, the MC Oakville Borrowings, and the MC Burlington Borrowings.

28. ~~25.~~ **THIS COURT ORDERS** that ~~the~~any additional monies from time to time borrowed by the Receiver pursuant to ~~this Order or any further order of this Court from the lender named in the Commitment Letter~~ and any and all Receiver's Certificates evidencing the same or any part thereof shall, ~~up to a principal amount of \$3,500,000, rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates, and any additional 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*~~ rank on a *pari passu* basis but immediately subordinate to the borrowings in favour of the lender named in the Commitment Letter~~made pursuant to this Order~~, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

29. ~~26.~~ **THIS COURT ORDERS** that all amounts owing under and secured by the Firm Capital Boathaus Mortgage (as defined in the Fourth Report) in favour of Firm Capital shall be repaid in full by the Receiver within two (2) business days of the date of this Order from the proceeds of the ~~Identified~~Scollard Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of Firm Capital in respect of the Firm Capital Boathaus Mortgage in the interim period from the making of this Order to the time such mortgage has been repaid in full (the "**Interim Period**"), provided, however, that Firm Capital shall not enforce any of its rights or remedies during the Interim Period in respect of the Firm Capital Boathaus Mortgage without the consent of the Receiver or approval of this Court.

30. **THIS COURT ORDERS** that all amounts owing under and secured by the 217 Memory Care Mortgages (as defined in the Sixth Report) in favour of 217 shall be repaid in full by the Receiver within seven (7) business days following April 28, 2017 from the proceeds of the MC Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of 217 in respect of the 217 Memory Care Mortgages in the

interim period from the making of this Order to the time such mortgages have been repaid in full (the "217 Interim Period"), provided, however, that 217 shall not enforce any of its rights or remedies during the 217 Interim Period in respect of the 217 Memory Care Mortgages without the written consent of the Receiver or approval of this Court.

### SERVICE AND NOTICE

31. ~~27.~~ **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 for each Debtor in accordance with the Protocol with the following URL:  
<http://www.ksvadvisory.com/insolvency-cases/scollard-development-corporation><http://www.ksvadvisory.com/insolvency-cases/>.

32. ~~28.~~ **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~~ Debtors' 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**

33. ~~29.~~ **THIS COURT ORDERS AND DIRECTS** that the within proceedings in respect of the ~~Debtor~~Debtors, 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 ~~30~~34 of this Order and proceed separately from the proceedings in respect of STC, the Trustee and the assets, properties and undertakings of STC.

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

Court File No. CV-17-\_\_\_\_\_ 11689-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

35. ~~31.~~ **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.

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

37. ~~33.~~ **THIS COURT ORDERS** that nothing in this Order or the BIA shall now or in the future grant to the Receiver, or be deemed to grant to the Receiver, or create in favour of any Person (including, without limitation, any potential future purchaser of the Property or the Original Debtor (the "**Future Purchaser**")), any right, title, entitlement, benefit or interest in or to Tarion Bond Nos. TDS0990169 or TDS0990142 issued, respectively, by Everest Insurance Company of Canada ("**Everest**") and Trisura (collectively, the "**Tarion Bonds**"). For greater certainty, neither the Receiver nor any Future Purchaser shall in any way be entitled to the benefit of or rely on the Tarion Bonds for any purpose whatsoever.

38. ~~34.~~ **THIS COURT ORDERS** that no Future Purchaser of the Property ~~or of the Original Debtor or the Original Debtor~~ shall, without making arrangements to extinguish any liability that Trisura and Everest may have in respect of the Tarion Bonds, be entitled to any right, title, entitlement, benefit or interest, in or to the Property of the Original Debtor, the Original Debtor or any pre-sale deposits held in trust by Chaitons LLP and paid by purchasers of the condominium units in respect of pre-sales at the Real Property related to the Tarion Bonds (the "**Deposits**").

39. ~~35.~~ **THIS COURT ORDERS AND DIRECTS** that Trisura shall be paid, in full, for any and all losses, damages, liabilities, costs and expenses owed to it by the Original Debtor or to any other Indemnitor pursuant to the Tarion Bonds or Indemnity Agreements defined below from any proceeds of sale resulting from any Transaction (as defined below) in respect of the Property of the Original Debtor.

40. ~~36.~~ **THIS COURT ORDERS** that the Receiver is precluded from consummating any Transaction (as defined below) that does not:

- (a) fully and finally discharge Trisura and Everest from any and all liability related to the Tarion Bonds; and
- (b) fully indemnify Trisura under the Indemnity Agreements dated October 19, 2015 and May 11, 2015 (the "**Indemnity Agreements**").

41. The term "**Transaction**" means any arrangement that provides for the sale of, development of or investment in all or part of the Property of the Original Debtor.

42. ~~37.~~ **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.

43. ~~38.~~ **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.

44. ~~39.~~ **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 applicable Properties with such priority and at such time as this Court may determine.

45. ~~40.~~ **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);
- (d) 22507-0109 (LT);
- (e) 24821-0207 (LT);
- (f) 07074-0452 (LT);
- (g) 48079-0670 (LT);
- (h) 36071-0115 (LT), 36071-0116 (LT), 36071-0117 (LT) and 36071-0118 (LT); and
- (i) 36072-0135 (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 ~~among other property~~, certain real property registered on title as being owned by ~~Seollard Development Corporation~~ [applicable Debtor] (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 Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ~~2nd~~ 28<sup>th</sup> day of ~~February~~ April 2017 (the "**Order**") made in a motion assigned to Court file number CV-17-\_\_\_\_\_ 11689-00CL, 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 reasonable and documented fees.

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 except for the Deposits (as defined in the Order), if applicable, 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);~~ ~~<\*>~~

# Tab D

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**

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

**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**

**SIXTH REPORT OF THE TRUSTEE - APRIL 18, 2017**



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

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Confidential Appendix 1 Correspondence between Trustee and Representative Counsel dated February 6, 2017, March 28, 2017 and April 3, 2017



**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**

**SIXTH REPORT OF THE TRUSTEE**

**APRIL 18, 2017**

**INTRODUCTION AND BACKGROUND**

1. This report (this "**Sixth 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, without 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 Sixth Report (instead, as set out below, pursuant to an Order granted January 24, 2017, Chaitons LLP has been 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.
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

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<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.

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, without 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, which CCAA Application, *inter alia*, proposed to afford broad powers to KSV, including certain investigative powers. 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**"). A copy of the Third Report, without 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 requested accounting from the Davies Developers, the Trustee cannot evaluate the propriety of the Davies Developers' use of Investors funds.

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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.

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 in the amount of \$2.5 million 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 provided, amongst other things, that Firm Capital would sell the Boathaus Property unless it was repaid by January 21, 2017.

20. On January 21, 2017, in order to prevent the immediate forced sale of the Boathaus Property by Firm Capital, the Trustee brought a motion to have KSV appointed by the Court as receiver and manager of the Boathaus Property<sup>3</sup> (in such capacity, the "**Boathaus Receiver**") to, amongst other things, market and solicit offers for the investment in, development of and/or sale of the Boathaus Property (the "**Boathaus Proceedings**"). In connection with this motion, the Trustee filed its fourth report dated January 20, 2017 (the "**Fourth Report**") and a supplement thereto dated January 26, 2017 (the "**Fourth Report Supplement**"), both of which are attached collectively, without appendices, as **Appendix "6"**.
21. As set out in the Fourth Report and the Fourth Report Supplement, a binding commitment for financing (the "**Boathaus Financing**") was received to replace the Firm Capital Boathaus Mortgage (which was registered ahead of the Investors' SMI) and to provide funding towards the administration of the Boathaus Proceedings, both of which were seen as necessary preconditions to proceed with the Boathaus Proceedings. It was also the Trustee's recommendation that the Boathaus Proceedings proceed separately from the present proceedings (and be assigned a separate Court file number) in order to maintain independence between Court officers and maximize procedural efficiency.
22. On February 2, 2017, the Honourable Justice Wilton-Siegel made an Order appointing KSV as the Boathaus Receiver (the "**Boathaus Receivership Order**"). As requested, the Boathaus Receivership Order approved the Boathaus Financing and provided that the Boathaus Proceedings were to proceed as a separate matter in Court file number CV-17-11689-00CL. Certain additional safeguards were also built into the Boathaus Receivership Order on the requests of Trisura Guarantee Insurance Company ("**Trisura**") (the chargee registered on title behind the then-Firm Capital Boathaus Mortgage but ahead of the Investors' SMI) and Leeswood Design Build Ltd. (a construction lien claimant) to protect their respective interests. A copy of the Boathaus Receivership Order, together with the corresponding ancillary Order, official hand-written

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<sup>3</sup> Together with all the assets, undertakings and properties of the Davies Boathaus Developer acquired for or used in relation to the Boathaus Property.

endorsement and unofficial typed endorsement are attached collectively as **Appendix "7"**.

23. The Davies Boathaus Developer sent a representative to attend at part of the hearing for the limited purpose of seeking an adjournment request to assess a pending offer, which request His Honour denied. Apart from the adjournment request, neither the Davies Boathaus Developer nor its counsel addressed the Court to oppose the relief sought, and no one attended at the hearing on behalf of any of the Davies Developers to challenge the contents of the Trustee's reporting in the First Report, the Second Report, the Third Report, the Fourth Report or the Fourth Report Supplement, all of which were approved at the Court attendance on February 2, 2017 (as reflected in Appendix "7" hereto).
24. The Fourth Report noted, amongst other things, that the Trustee may seek to expand the Boathaus Proceedings at a later date to include other properties of the Developers generally, including the Davies Developers specifically. The Trustee has also filed a fifth report dated January 23, 2017 and a supplement thereto dated April 4, 2017 (together with the First Report, the Second Report, the Third Report and the Fourth Report, the "**Previous Reports**") in response to a receivership application brought by a mortgagee against a Developer that is not a Davies Developer. All the Previous Reports and the Trustee's activities therein have been approved by this Court.

#### **PURPOSE OF THE SIXTH REPORT**

25. The purpose of this Sixth Report is to provide the Court with information to support the Trustee's request for Orders:
  - (i) expanding the Boathaus Proceedings to include additional properties of the Davies Developers, being (as defined herein), each of the three Memory Care Properties, the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property;



- (ii) compelling Mr. Davies and the Davies Developers to immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers;
- (iii) approving this Sixth Report and the conduct and activities of the Trustee as described herein;
- (iv) sealing the confidential appendix to this Sixth Report; and
- (v) approving the fees and disbursements of the Trustee and its counsel to and including March 31, 2017 and an allocation of such fees and disbursements.

26. 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**

27. This Sixth 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 Sixth 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 Sixth Report for any other purpose.
28. In preparing this Sixth 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 also relied on information provided to it by KSV in its capacity as the Boathaus Receiver, including its first report dated April 5, 2017 (the "**Boathaus Receiver's First Report**"). The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Trustee expresses no opinion or other form of assurance with respect to such information.

29. All references to dollars in this Sixth Report are in Canadian currency unless otherwise noted.

#### **THE OTHER DAVIES DEVELOPERS AND THEIR PROJECTS**

30. Apart from the Davies Boathaus Developer and the Boathaus Property that are already subject to the Boathaus Proceedings, there are ten other Davies Developers – each with its own underlying real property. Of these ten other Davies Developers, nine are currently in default to the corresponding Tier 1 Trustee Corporation,<sup>4</sup> as summarized in the table over the next two pages and set out in more detail in the balance of this Sixth Report:

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<sup>4</sup> The one Davies Developer believed not to be presently in default to its corresponding Tier 1 Trustee Corporation is Textbook (445 Princess Street) Inc. (for which the Tier 1 Trustee Corporation is Textbook Student Suites (445 Princess Street) Trustee Corporation).

DAVIES DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI REGISTERED ON TITLE <sup>5</sup>	DAVIES DEVELOPER DEFAULT(S) PER SMI	CHARGE(S) REGISTERED ON TITLE AHEAD OF SMI?
<b>McMurray Property</b>			
McMurray Street Investments Inc. ("Davies McMurray Developer")	7743718 Canada Inc. ("McMurray Trustee Corporation") holds an SMI in the principal amount of \$3.5 million ("McMurray SMI") over 28 McMurray Street West, Bracebridge, ON ("McMurray Property")	<ul style="list-style-type: none"> <li>statement of claim seeking possession issued by another mortgagee</li> <li>SMI matured prior to Trustee's Appointment without payment of principal (or subsequent interest) to McMurray Trustee Corporation (or to Trustee)</li> <li>two notices of sale under mortgage issued by another mortgagee</li> </ul>	Yes
<b>Memory Care Properties</b>			
Memory Care Investments (Kitchener) Ltd. ("Davies MC Kitchener Developer")	MC Trustee (Kitchener) Ltd. ("MC Kitchener Trustee Corporation") holds an SMI ("MC Kitchener SMI") in the principal amount of \$10.6 million over 169 Borden Avenue North, Kitchener, ON ("MC Kitchener Property")	<ul style="list-style-type: none"> <li>SMI matured prior to Trustee's Appointment without payment of principal (or subsequent interest) to MC Kitchener Trustee Corporation (or to Trustee)</li> <li>filed for CCAA protection</li> <li>notice of sale under mortgage issued by another mortgagee</li> </ul>	Yes
Memory Care Investments (Oakville) Ltd. ("Davies MC Oakville Developer")	2223974 Ontario Limited ("Oakville-Burlington-Legacy Trustee Corporation") holds an SMI ("MC Oakville SMI") in the principal amount of \$9 million over 103 and 109 Garden Drive, Oakville, ON ("MC Oakville Property")	<ul style="list-style-type: none"> <li>ceased making interest payments to MC Oakville Trustee Corporation prior to Trustee's Appointment</li> <li>SMI has since matured without payment</li> <li>filed for CCAA protection</li> <li>notice of sale under mortgage issued by another mortgagee</li> </ul>	Yes
1703858 Ontario Inc. ("Davies MC Burlington Developer")	Oakville-Burlington-Legacy Trustee Corporation holds an SMI ("MC Burlington SMI") in the principal amount of \$8.3 million over 2168 and 2174 Ghent Avenue, Burlington, ON ("MC Burlington Property")	<ul style="list-style-type: none"> <li>ceased making interest payments to Legacy Lane Trustee Corporation prior to Trustee's Appointment</li> <li>filed for CCAA protection</li> <li>notice of sale under mortgage issued by another mortgagee</li> </ul>	Yes

<sup>5</sup> All SMIs held by the Tier 1 Trustee Corporations are jointly held with Olympia Trust Company for the benefit of those Investors holding their underlying positions in RRSPs.

DAVIES DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI REGISTERED ON TITLE <sup>6</sup>	DAVIES DEVELOPER DEFAULT(S) PER SMI	CHARGE(S) REGISTERED ON TITLE AHEAD OF SMI?
<b>Other Davies Defaulting Properties</b>			
Legacy Lane Investments Ltd. (" <b>Davies Legacy Lane Developer</b> ")	Oakville-Burlington-Legacy Trustee Corporation holds an SMI (" <b>Legacy Lane SMI</b> ") in the principal amount of \$3.5 million over 16 Legacy Lane, Huntsville, ON (" <b>Legacy Lane Property</b> ")	<ul style="list-style-type: none"> <li>• ceased making interest payments to Legacy Lane Trustee Corporation prior to Trustee's Appointment</li> <li>• filed for CCAA protection</li> </ul>	No (excluding construction liens)
Textbook (525 Princess Street) Inc. (" <b>Davies 525 Princess Developer</b> ")	Textbook Student Suites (525 Princess Street) Trustee Corporation (" <b>525 Princess Trustee Corporation</b> ") holds an SMI (" <b>525 Princess SMI</b> ") in the principal amount of \$6.4 million over 525 Princess Street, Kingston, ON (" <b>525 Princess Property</b> ")	<ul style="list-style-type: none"> <li>• filed for CCAA protection</li> </ul>	No (excluding construction liens)
Textbook (555 Princess Street) Inc. (" <b>Davies 555 Princess Developer</b> ")	Textbook Student Suites (555 Princess Street) Trustee Corporation (" <b>555 Princess Trustee Corporation</b> ") holds an SMI (" <b>555 Princess SMI</b> ") in the principal amount of \$8 million over 555 Princess Street, Kingston, ON (" <b>555 Princess Property</b> ")	<ul style="list-style-type: none"> <li>• insufficient funds provided to Trustee to satisfy interest obligations</li> <li>• filed for CCAA protection</li> </ul>	No (excluding construction liens)
Textbook Ross Park Inc. (" <b>Davies Ross Park Developer</b> ")	Textbook Student Suites (Ross Park) Trustee Corporation (" <b>Ross Park Trustee Corporation</b> ") holds an SMI (" <b>Ross Park SMI</b> ") in the principal amount of \$11.6 million over 1234, 1236, 1238, 1240, 1244 and 1246 Richmond Street, London, ON (" <b>Ross Park Property</b> ")	<ul style="list-style-type: none"> <li>• ceased making interest payments subsequent to Trustee's Appointment</li> <li>• filed for CCAA protection</li> </ul>	Yes
Textbook (774 Bronson Avenue) Inc. (" <b>Davies Bronson Developer</b> ")	Textbook Student Suites (774 Bronson Avenue) Trustee Corporation (" <b>Bronson Trustee Corporation</b> ") holds an SMI (" <b>Bronson SMI</b> ") in the principal amount of \$10.875 million over 774 Bronson Avenue and 557 Cambridge Street South, Ottawa, ON (" <b>Bronson Property</b> ")	<ul style="list-style-type: none"> <li>• filed for CCAA protection</li> <li>• notice of intention to enforce security issued by another mortgagee</li> </ul>	Yes

<sup>6</sup> All SMIs held by the Tier 1 Trustee Corporations are jointly held with Olympia Trust Company for the benefit of those Investors holding their underlying positions in RRSPs.

31. Each of these nine defaulting Davies Developers and corresponding properties is discussed below.

### ***THE MCMURRAY PROPERTY***

32. The McMurray Property is owned by the Davies McMurray Developer, which is one of two Davies Developers that did not seek CCAA protection.<sup>7</sup> The CCAA Application nonetheless disclosed certain information in respect of the Davies McMurray Developer and the McMurray Property because, according to the evidence filed by John Davies in the CCAA Application, “[c]ircumstances may require [the Davies McMurray Developer] to seek CCAA protection in the future.” A copy of the affidavit sworn by Mr. Davies on December 6, 2016 in support of the CCAA Application is attached, without exhibits, as **Appendix “8”** (the “**Davies Affidavit**”).
33. As indicated in the corporate profile report attached as **Appendix “9”**, the Davies McMurray Developer’s registered office is located in Mississauga, Ontario, with John Davies as the sole director and each of John Davies, Gregory Harris (the lawyer at H+H) and David Arsenault as officers. According to the Davies Affidavit, the shares of the Davies McMurray Developer are held as follows: 30% by the Davies Family Trust; 16% by R. Alan Harris (who, according to the Davies Affidavit, is Gregory Harris’ father); 8% by D. Arsenault Holdings Inc.; and 46% by Tori Manchulenko.
34. According to the Davies Affidavit, the intended use for the McMurray Property is a condominium project.
35. The McMurray Property consists of two parcels of land in Bracebridge, Ontario, as attached as **Appendix “10”**, which parcel registers reflect the following:
- (i) the Davies McMurray Developer purchased the McMurray Property on or about January 15, 2010 for \$650,000;
  - (ii) the McMurray SMI was registered on title on or about May 3, 2012 for \$3.5 million;

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<sup>7</sup> The other being Textbook (445 Princess Street) Inc., which is the one Davies Developer that is not presently believed to be in default to its corresponding Tier 1 Trustee Corporation.

- (iii) several adjustments were subsequently made on title to the McMurray SMI to reflect that Olympia Trust Company (“**OTC**”) would ultimately hold the McMurray SMI jointly with the McMurray Trustee Corporation to accommodate RRSP and other Investors, respectively;
  - (iv) a mortgage in favour of Computershare Trust Company of Canada (“**Computershare**”) was registered on title for \$2 million on January 16, 2014 (the “**Computershare McMurray Mortgage**”), and a postponement of the McMurray SMI to the Computershare McMurray Mortgage was then immediately registered on title;
  - (v) a \$5 million charge in favour of Trisura was registered on title on November 21, 2014 (the “**Trisura McMurray Charge**”), and a postponement of the McMurray SMI to the Trisura McMurray Charge was registered on title on January 8, 2015; and
  - (vi) the Appointment Order was registered on title on November 3, 2016.
36. Copies of the Computershare McMurray Mortgage (together with a notice of assignment of rents and the postponement by the McMurray SMI) and the Trisura McMurray Charge (together with the postponement by the McMurray SMI) are respectively attached as **Appendix “11”** and **Appendix “12”**.
37. Each of Computershare and Trisura has also made one or more registration(s) against the Davies McMurray Developer under the *Personal Property Security Act* (Ontario) (the “**PPSA**”). The Trustee is not aware of the McMurray Trustee Corporation holding any personal property security against the Davies McMurray Developer. For completeness sake, a copy of the certified PPSA search results against the Davies McMurray Developer, with currency to March 27, 2017, is attached as **Appendix “13”**.
38. Copies of the material components of the McMurray SMI are attached collectively as **Appendix “14”**, being: (i) a loan agreement dated April 20, 2012 between the

Davies McMurray Developer, as developer/borrower, and the McMurray Trustee Corporation, as lender on behalf of the Investors (the "**McMurray SMI Loan Agreement**"); (ii) a syndicated mortgage participation agreement dated April 20, 2012 between McMurray Trustee Corporation and the Investors (the "**McMurray SMI Participation Agreement**"); and (iii) the charge registered on title (the "**McMurray SMI Charge**").

39. The Davies Affidavit acknowledges that both the Computershare McMurray Mortgage and the McMurray SMI matured in the spring of 2016 without repayment of principal, and that interest has also not been paid on the McMurray SMI since July 2016. These constitute Events of Default (as defined in the McMurray SMI Loan Agreement).
40. According to the Davies Affidavit, the Davies McMurray Developer entered into a sale agreement for the McMurray Property to close on January 6, 2016 for \$8 million, consisting of a \$6 million cash component and a \$2 million vendor take-back mortgage (collectively, the "**McMurray Transaction**"). According to the Davies Affidavit, the \$6.0 million cash component was to have been sufficient to repay both the Computershare McMurray Mortgage and the McMurray SMI with all interest arrears.
41. Notwithstanding what was sworn in the Davies Affidavit, the Trustee learned from H+H (the Davies McMurray Developer's counsel) that the anticipated cash proceeds from the McMurray Transaction would be insufficient to repay the entirety of the McMurray SMI, and that the Trustee and OTC would instead be assigned an interest in the \$2.0 million vendor take-back mortgage until the entirety of the McMurray SMI were repaid.
42. On January 4, 2017, shortly before the anticipated closing of the McMurray Transaction, counsel for the Trustee and counsel for the Davies McMurray Developer agreed that the outstanding balance of the McMurray SMI was \$4,390,738, of which \$3,619,000 was to be paid in cash on closing, with the balance to be satisfied through the assignment of interest in the vendor take-back mortgage.

43. On January 4 and 5, 2017, H+H advised the Trustee that it was unsure whether the McMurray Transaction would close, disclosing to the Trustee for the first time that the Davies McMurray Developer had not had any communications with (or received any contact information for) the purchaser or its counsel. The Trustee made immediate enquiries with H+H to understand the nature of its previous interactions with the purchaser, including how it was possible that the Davies McMurray Developer negotiated and entered into a sale agreement with the purchaser, yet did not have contact information for the purchaser. No meaningful response has been provided as of the date of this Sixth Report. Copies of communications between the Trustee's counsel and H+H in this regard are attached collectively as **Appendix "15"**.
44. On January 6, 2017, H+H advised the Trustee that the McMurray Transaction did not close because of the purchaser's purported conduct and behaviour (which H+H described as being a lack of communication and cooperation).
45. On January 13, 2017, the Davies McMurray Developer confirmed to the Trustee, through counsel, that Wynn Realty Corporation, Brokerage, held, and was continuing to hold, the deposit made by the purchaser in respect of the McMurray Transaction (the "**McMurray Transaction Deposit**"). The Trustee insisted to H+H that the McMurray Transaction Deposit remain in the real estate agent's trust account until: (i) all parties, including the Trustee, agree to the release of the McMurray Transaction Deposit; or (ii) Order of the Court. The Trustee also asked to be kept apprised of the status of the McMurray Transaction, should the Davies McMurray Developer or its counsel re-establish contact with the purchaser. Copies of an email chain between the Trustee's counsel and H+H on these issues is attached as **Appendix "16"**.
46. The Trustee has not received any further updates from H+H or the Davies McMurray Developer in respect to the McMurray Transaction or the McMurray Transaction Deposit.
47. When the McMurray Transaction failed to close, Computershare issued a notice of sale in respect of the McMurray Property dated January 9, 2017 (the "**Computershare McMurray Notice of Sale**"). The Computershare McMurray



Notice of Sale required the Davies McMurray Developer (or any other registrant on title) to pay \$1,998,923.75 in satisfaction of the Computershare McMurray Mortgage by February 15, 2017, failing which Computershare advised sale proceedings would be commenced in respect of the McMurray Property. A copy of the Computershare McMurray Notice of Sale is attached as **Appendix "17"**.

48. On January 17, 2017, the Trustee issued a letter to the Investors in the McMurray SMI, advising, amongst other things, as to the Trustee's above understanding of what happened with the McMurray Transaction, the status of the McMurray Transaction Deposit and the issuance of the Computershare McMurray Notice of Sale (the "**Trustee's McMurray Investor Letter**"). Amongst other things, the Trustee's McMurray Investor Letter cautioned that the Trustee did not have access to a pool of funds to take-out the Computershare McMurray Mortgage, and it was unclear what amount, if any, would remain to satisfy the McMurray SMI in the event that the McMurray Property were sold privately in accordance with the Computershare McMurray Notice of Sale. A copy of the Trustee's McMurray Investor Letter is attached as **Appendix "18"**.
49. To the best of the Trustee's knowledge, the February 15, 2017 deadline established by the Computershare McMurray Notice of Sale expired without repayment of the Computershare McMurray Mortgage.
50. On February 28, 2017, the Trustee received an email from H+H, which, amongst other things:
  - (i) advised the Trustee that Computershare had served a statement of claim against the Davies McMurray Developer in August 2016, seeking, amongst other things, possession of the McMurray Property (collectively, the "**Computershare McMurray Action**") and attached same;
  - (ii) attached a letter from Computershare's counsel dated February 23, 2017, advising that the default judgment would be obtained if a statement of defence were not delivered by the Davies McMurray Developer by March 10, 2017; and

- (iii) attached a notice of sale issued by Computershare in respect of the McMurray Property dated October 7, 2016 (predating the Computershare McMurray Notice of Sale dated January 9, 2017) (the “**Original Computershare McMurray Notice of Sale**”).

- 51. None of the Computershare McMurray Action, the relief against the McMurray Property sought therein or the Original Computershare McMurray Notice of Sale had been previously disclosed to the Trustee or in the CCAA Application. Copies of H+H’s email and the attachments therein are attached collectively as **Appendix “19”**. The First Report, the Second Report and the Third Report (attached, respectively, without appendices, as Appendices 2 through 4) set out the Trustee’s repeated attempts to glean information from the Davies Developers, including, without limitation, information related to mortgages ranking ahead or behind the mortgages held by the Tier 1 Trustee Corporations on the Davies Developers’ projects.
- 52. As of the date of this Sixth Report, the Trustee has no comfort regarding the Davies McMurray Developer’s ability or willingness to repay the Computershare McMurray Mortgage (let alone the McMurray SMI), or any of the purported arrangements that any of the Davies Developers may purport to advance with respect to their projects generally.
- 53. Since the failed McMurray Transaction, the Trustee has pursued three different financiers as potential take-out lenders for the Computershare McMurray Mortgage in order to protect the interest of the McMurray SMI but, at this point, the Trustee has been unable to secure any such financing.
- 54. On April 10, 2017, the Trustee had a conference call with representatives of the Computershare McMurray Mortgage (Pillar Financial) (the “**Computershare Representatives**”) and its counsel, to understand the status of Computershare’s enforcement actions and plans. During the call, the Trustee learned that Computershare has advanced its enforcement efforts and plans to take possession of the McMurray Property and continue with sale efforts once it is legally entitled to do so. The Trustee suggested that the appointment of a Court-appointed receiver would be appropriate given the issues surrounding the

McMurray Property and, more particularly, the conduct of the McMurray Developer and the McMurray Transaction Deposit. The Computershare Representatives have taken same under advisement and agreed to advise the Trustee of any developments in advancing its enforcement action.

***THE MEMORY CARE PROPERTIES***

55. The MC Kitchener Property, the MC Oakville Property and the MC Burlington Property (collectively, the “**Memory Care Properties**”) are owned, respectively, by the Davies MC Kitchener Developer, the Davies MC Oakville Developer and the Davies MC Burlington Developer (collectively, the “**Davies Memory Care Developers**”). Each of the Davies Memory Care Developers sought CCAA protection in the CCAA Application.
56. As indicated in the corporate profile reports collectively attached as **Appendix “20”**, the Davies Memory Care Developers’ registered offices are each located in Mississauga, Ontario, with John Davies as the sole director and officer in each case. According to the Davies Affidavit, the shares of the Davies Memory Care Developers are held as follows:
- (i) the shares of each of the Davies MC Kitchener Developer and the Davies MC Burlington Developer, and one of the two classes of shares of the Davies MC Oakville Developer, are ultimately held, through one or more intermediate vehicles, by Mr. Davies’ wife and children (50%) and the mother of Gregory Harris (the lawyer at H+H) (50%); and
  - (ii) the other class of shares of the Davies MC Oakville Developer is held solely by five SMI Investors.
57. According to the Davies Affidavit, the Memory Care Properties are intended to be used for Alzheimer’s residential facilities. Apart from certain suspended footings and foundational work in respect of the MC Burlington Property, the Davies Affidavit advises that no construction had commenced on any of the Memory Care Properties.

58. The MC Kitchener Property consists of one parcel of land in Kitchener, Ontario, as attached as **Appendix "21"**, which parcel register reflects, in substance, the following:

- (i) 237519 Ontario Ltd. ("**237**"), a corporation related to John Davies,<sup>8</sup> purchased the MC Kitchener Property on or about June 4, 2013 for \$1,585,000, and then transferred the MC Kitchener Property to the Davies MC Kitchener Developer on or about February 25, 2014 for \$3,950,000;
- (ii) the MC Kitchener SMI was registered on title on or about the same date as this transfer for \$6,500,000;
- (iii) several adjustments were subsequently made on title to the MC Kitchener SMI to reflect that OTC would hold the MC Kitchener SMI jointly with the MC Kitchener Trustee Corporation to accommodate RRSP and other Investors, respectively;
- (iv) a mortgage in favour of 2174217 Ontario Inc. ("**217**") was registered on title for \$950,000 on February 17, 2015 (the "**217 MC Kitchener Mortgage**"), and a postponement of the MC Kitchener SMI to the 217 MC Kitchener Mortgage was then immediately registered on title;
- (v) notices were subsequently filed on title in respect of the 217 MC Kitchener Mortgage and the MC Kitchener SMI, which, amongst other things, increased the principal amount of the MC Kitchener SMI to \$10.6 million; and
- (vi) the Appointment Order was registered on title on November 3, 2016.

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<sup>8</sup> According to the evidence filed by Mr. Davies in the CCAA Application, the related-parent corporation to the Davies MC Kitchener Developer purchased the MC Kitchener Property from a court-appointed receiver and assigned its interest to 237.

59. The MC Oakville Property consists of one parcel of land in Oakville, Ontario, as attached as **Appendix "22"**, which parcel register reflects, in substance, the following:

- (i) the Davies MC Oakville Developer purchased the MC Oakville Property on or about October 29, 2012 for \$1,945,000, and the MC Oakville SMI was then immediately registered on title for \$3,000,000;
- (ii) several adjustments were subsequently made on title to the MC Oakville SMI to reflect that OTC would hold the MC Oakville SMI jointly with the Oakville-Burlington-Legacy Trustee Corporation to accommodate RRSP and other Investors, respectively;
- (iii) notices were subsequently filed on title to increase the principal amount secured under the MC Oakville SMI to \$9 million;
- (iv) a mortgage in favour of 217 was registered on title for \$1,250,000 on July 8, 2016 (the "**217 MC Oakville Mortgage**"), and a postponement of the MC Oakville SMI to the 217 MC Oakville Mortgage was then immediately registered on title; and
- (v) the Appointment Order was registered on title on November 3, 2016.

60. The MC Burlington Property consists of one parcel of land in Burlington, Ontario, as attached as **Appendix "23"**, which parcel register reflects, in substance, the following:

- (i) the Davies MC Burlington Developer purchased the MC Burlington Property between October 17, 2006 and August 8, 2007 for the aggregate amount of \$965,000;
- (ii) the MC Burlington SMI (together with the MC Kitchener SMI and the MC Oakville SMI, the "**Memory Care SMIs**") was registered on title on May 17, 2013 for \$5,500,000;

- (iii) several adjustments were subsequently made on title to the MC Burlington SMI to reflect that OTC would hold the MC Burlington SMI jointly with the Oakville-Burlington-Legacy Trustee Corporation to accommodate RRSP and other Investors, respectively;
  - (iv) notices were subsequently filed on title to increase the principal amount secured under the MC Burlington SMI to \$8,262,600;
  - (v) a mortgage in favour of 217 was registered on title for \$1,250,000 on July 8, 2016 (the "**217 MC Burlington Mortgage**", and together with the 217 MC Kitchener Mortgage and the 217 MC Oakville Mortgage, the "**217 Memory Care Mortgages**"), and a postponement of the MC Burlington SMI to the 217 MC Burlington Mortgage was then immediately registered on title;
  - (vi) the Appointment Order was registered on title on November 3, 2016; and
  - (vii) two construction liens and corresponding certificates in favour of Varcon Construction Corporation and Limen Group Const. Ltd. in the amounts of, respectively, \$786,999.80 and \$91,476.89 (the "**MC Burlington Construction Liens**") were subsequently registered on title.
61. Copies of the MC Burlington Construction Liens are attached collectively as **Appendix "24"**.
62. Copies of all three 217 Memory Care Mortgages, as amended, are attached collectively as **Appendix "25"** (together with the postponements given by the Memory Care SMIs).
63. 217 has also made one or more registration(s) against the Davies Memory Care Developers under the PPSA. The Trustee is not aware of any of the Tier 1 Trustee Corporations holding any personal property security against the Davies Memory Care Developers. For completeness sake, copies of the certified PPSA

search results against the Davies Memory Care Developers, with currency to March 27, 2017, are attached collectively as **Appendix “26”**.

64. Copies of the material components of the Memory Care SMIs are attached collectively as **Appendix “27”**, being: (i) loan agreements between each of the Davies Memory Care Developers, as developer/borrower, and the corresponding Tier 1 Trustee Corporation, as lender on behalf of the Investors (the **“Memory Care SMI Loan Agreements”**); (ii) syndicated mortgage participation agreements between the applicable Tier 1 Trustee Corporation and the Investors (the **“Memory Care SMI Participation Agreements”**); and (iii) the charges, as amended, registered on title (the **“Memory Care SMI Charges”**).
65. Each of the Davies Memory Care Developers ceased making interest payments on the Memory Care SMIs prior to the Trustee’s Appointment. Moreover, the MC Kitchener SMI matured prior to the Trustee’s Appointment and the MC Oakville SMI matured after the Trustee’s Appointment, and in neither case were any amounts repaid. 217 has also issued notices of sale in respect of each of the Memory Care Properties, as a result of defaults in respect of the 217 Memory Care Mortgages, copies of which notices of sale are attached collectively as **Appendix “28”**.

#### ***THE OTHER DAVIES DEFAULTING PROPERTIES***

66. The Legacy Lane Property, the 525 Princess Property, the 555 Princess Property, the Ross Park Property and the Bronson Property (collectively, the **“Other Davies Defaulting Properties”**) are owned, respectively, by the Davies Legacy Lane Developer, the Davies 525 Princess Developer, the Davies 555 Princess Developer, the Davies Ross Park Developer and the Davies Bronson Developer (collectively, the **“Other Davies Defaulting Developers”**). Each of the Other Davies Defaulting Developers sought CCAA protection in the CCAA Application.
67. As indicated in the corporate profile reports collectively attached as **Appendix “29”**, the Other Davies Defaulting Developers’ registered offices are each located in Mississauga, Ontario, with John Davies and his business partner, Walter Thompson, as the sole directors and officers in each case, except for the

Legacy Lane Developer, the sole director and officer of which is John Davies. According to the Davies Affidavit, the shares of the Other Davies Defaulting Developers are ultimately held, through one or more intermediate vehicles, by one or more of:

- (i) Mr. Davies' wife and children;
- (ii) Mr. Singh (see paragraphs 5, 6 and 9 of this Sixth Report);
- (iii) Mr. R. Alan Harris (who, according to the Davies Affidavit, is Gregory Harris' father); and
- (iv) a trust, of which, according to the Davies Affidavit, Mr. Thompson, amongst other unidentified persons, is a beneficiary.

68. According to the Davies Affidavit, all the Other Davies Defaulting Properties apart from the Legacy Lane Property are intended to be used for student residences and ancillary retail space, with the Legacy Lane Property intended to be used for townhomes. The Davies Affidavit advises that no material construction had commenced on any of the Other Davies Defaulting Properties.

69. The Trustee is not aware of any of the Tier 1 Trustee Corporations holding any personal property security against the Other Davies Defaulting Developers. For completeness sake, copies of the certified PPSA search results against the Other Davies Defaulting Developers, with currency to March 27-30, 2017, are attached collectively as **Appendix "30"**.

70. Apart from plan references/agreements and construction liens of limited amounts,<sup>9</sup> there are no encumbrances on the Legacy Lane Property, the 525 Princess Property or the 555 Princess Property other than, respectively, the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI.

71. The Legacy Lane Property consists of one parcel of land in Huntsville, Ontario, the parcel register of which is as attached as **Appendix "31"**. The 525 Princess

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<sup>9</sup> There is one construction lien registered on title to the Legacy Land Property for \$93,959 in favour of HLD Corporation Ltd., and there is one construction lien registered on title to the 525 Princess Property and 555 Princess Property for \$66,746.58 in favour of J.L. Richards & Associates Limited.



Property consists of four parcels of land in Kingston, Ontario, the parcel registers of which are attached as **Appendix "32"**. The 555 Princess Property consists of one parcel of land in Kingston, Ontario, the parcel register of which is attached as **Appendix "33"**. In each case, the corresponding SMI in favour of the applicable Tier 1 Trustee Corporation is held jointly with OTC to accommodate RRSP Investors.

72. Copies of the material components of the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI are attached collectively as **Appendix "34"**, being: (i) loan agreements between each of the applicable Davies Developer, as developer/borrower, and the corresponding Tier 1 Trustee Corporation, as lender on behalf of the Investors; (ii) syndicated mortgage participation agreements between the applicable Tier 1 Trustee Corporation and the Investors; and (iii) the charges, as amended, registered on title.
73. There are other encumbrances registered on title to the Ross Park Property and the Bronson Property apart from the Ross Park SMI and the Bronson SMI. As no relief is being sought in respect of the Ross Park Property or the Bronson Property at this time, an examination of their parcel pages or registrations has not been provided in this Sixth Report.
74. Each of the Other Davies Defaulting Developers has committed one or more defaults in connection with its corresponding SMI, including, in all cases, the filing for CCAA protection. In addition, the Davies Legacy Lane Developer ceased making interest payments prior to the Trustee's Appointment, the Davies 555 Princess Developer and the Davies Ross Park Developer ceased making interest payments subsequent to the Trustee's Appointment and the Davies Bronson Developer received a notice of intention to enforce security by another mortgagee, a copy of which notice is attached as **Appendix "35"**.

#### **APPOINTMENT OF A RECEIVER**

75. At this stage, the Trustee considers that it has exhausted any and all reasonable efforts to allow the defaulting Davies Developers to implement their own resolutions to deal with their liquidity problems. Quite apart from the lack of confidence in Mr. Davies as a result of, amongst other things, the failed

McMurray Transaction and the circumstances surrounding same, and quite apart from the mounting enforcement steps that have been taken by other mortgagees without any solution being advanced or implemented by Mr. Davies, the Boathaus Receiver has recently filed the Boathaus Receiver's First Report, which, amongst other things, identified extensive transfers of money from the Davies Boathaus Developer to various related entities, including other Davies Developers, and *vice versa*. As set out in the Boathaus Receiver's First Report, the Davies Boathaus Developer was not permitted to use the loan proceeds from the Boathaus SMI for any purpose other than the development and construction of the Boathaus Property without the authorization of the Boathaus SMI investors. In addition, and of significant concern, is that the Boathaus Receiver's First Report identified substantial transfers of money from the Davies Boathaus Developer to entities controlled by Mr. Davies and entities controlled by Raj Singh. A copy of the Boathaus Receiver's First Report is attached, without appendices, as **Appendix "36"**.

76. In light of all the foregoing, the Trustee believes that its only reasonable and prudent option under the circumstances is, where possible, to have a receiver and manager appointed in respect of the applicable defaulting Davies Developers. At the same time, given the presence of charges registered on title in priority to the SMIs on many of the properties, the Trustee cannot proceed with the request to appoint a receiver and manager over these properties in the absence of take-out financing or other acceptable arrangements being made with any applicable prior-ranking chargees on title.
77. At this time, the Trustee has secured take-out financing for the three 217 Memory Care Mortgages, copies of which commitment letters are attached collectively as **Appendix "37"**, namely, the "**MC Kitchener Commitment Letter**", the "**MC Oakville Commitment Letter**" and the "**MC Burlington Commitment Letter**". As set out in the email to the Trustee attached along with the commitment letters, all of the conditions in the commitment letters have been waived. The Trustee is therefore in a position to request from this Court that the Boathaus Proceedings be expanded to include the three Memory Care Properties, as well as the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property (being the three properties without any other mortgages on title apart from the SMIs).

78. On January 24, 2017, pursuant to the Order of the Honourable Justice Hainey, Chaitons LLP was appointed by the Court as counsel for all the Investors across all 16 SMIs (in such capacity, "**Representative Counsel**"), unless and until written notice is provided by a particular Investor to Representative Counsel pursuant to a specified opt-out procedure if such Investor does not wish to be represented by Representative Counsel (collectively, the "**Representative Counsel Order**"). A copy of the affidavit of Peter Pontsa sworn January 18, 2017 in support of the Representative Counsel Order (the "**Pontsa Affidavit**") is attached, without exhibits, as **Appendix "38"**, and a copy of the Representative Counsel Order is attached as **Appendix "39"**.
79. The Representative Counsel Order also provides, amongst other things, that Representative Counsel is empowered and authorized to accept instructions from the Investors Committee (as defined in the Pontsa Affidavit), which instructions shall be binding on the Investors who have not opted out of representation by Representative Counsel. The Trustee is not aware of any opt-out notice having been given as of the date of this Sixth Report.
80. On January 27, 2017 and January 30, 2017, the Trustee held meetings with the Investors in, amongst others, each of the Memory Care SMIs, the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI. The meetings had been organized prior to the Representative Counsel's appointment, but Representative Counsel was invited to participate in these meetings (and did so) with the Trustee and its counsel. Amongst the items discussed at these meetings was the possibility of proceeding with one or more receiverships for the applicable SMIs and the reasons therefor.
81. On February 6, 2017, the Trustee sent a letter to Representative Counsel, setting out the Trustee's recommendations with respect to all the SMIs, including, without limitation, its recommendations with respect to each of the Memory Care SMIs, the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI, and sought directions from the Investors Committee regarding same. In addition to various subsequent discussions and telephone conversations, follow-up letters were also sent by the Trustee to Representative Counsel on each of March 28, 2017 and April 3, 2017. Copies of all three letters are attached as **Confidential**

**Appendix “1”**, the contents of which contain commercially-sensitive material, the release of which, if released publicly, could easily prejudice the stakeholders of the Tier 1 Trustee Corporations and the Developers.

82. Notwithstanding a passage of time in excess of two months, the Investors Committee has failed to communicate a unified position to the Trustee with respect to the Trustee’s recommendations. This delay has been costly, in respect of accruing interest on the non-SMI first mortgages, professional costs of administration and carrying costs associated with the land. The Trustee understands that certain members of the Investors Committee are considering a conditional offer put forward in respect of the Memory Care SMIs by Raj Singh. In light of, amongst other things, the evidence in the Marfatia Affidavit regarding Mr. Singh’s historical involvement in the various entities connected with the SMIs (see paragraphs 5 and 6 of this Sixth Report for a summary), the Trustee’s position is that any offer put forward by Mr. Singh should be tested in the open market.
83. One member of the Investor Committee representing the MC Oakville Property, Mr. Dennis Gingell, has opposed the advice of the Trustee (and we understand the advice of Representative Counsel). Notwithstanding the Trustee’s communicated intended path forward to Representative Counsel and the Investor Committee, the Trustee understands Mr. Gingell has continued to negotiate independently with Raj Singh and an outside consultant, Mr. Dennis Jewitt (who was involved in the Vaughan Crossings transaction) to pursue other options for the MC Oakville Property, absent consultation with the MC Oakville SMI Investors. The Trustee does not support the direction proposed by Mr. Gingell for, amongst other things, the reasons set out in its April 3, 2017 letter to Representative Counsel, referred to above.
84. The Trustee continues to deal with challenges and inquiries concerning the dissemination of conflicting information to certain Investors from a former investment advisor/mortgage broker that promoted and sold the SMIs. A similar issue had arisen in respect of a different investment advisor to Tier 1, which was detailed in the Trustee’s Second Report. A former investment advisor, Michael Fox, has recently sent correspondence to his alleged investor constituents and

the Investor Committee, recommending opposition to the Trustee's efforts. Such correspondence recommends that Investors support the appointment of an alternate receiver (other than KSV) as recommended by Raj Singh, as well as the retention of Dennis Jewitt. The Trustee is of the view that Mr. Fox's email and position are self-serving and focused on directing the Investors' concerns away from the investment advisors and the parties behind the SMIs and towards the professionals. In addition, the Trustee, for reasons voiced on several occasions, does not consider Mr. Fox's considered alternatives reasonable, informed or viable. The Trustee does not support the appointment of an alternate receiver for the reasons set out herein. A copy of Mr. Fox's correspondence, which was forwarded to the Trustee by a member of the Investor Committee, is attached as **Appendix "40"**.

85. A significant number of Investors have inquired whether the Trustee will pursue civil litigation or criminal charges against the parties behind the SMIs, the Davies Developers, or their investment advisors/mortgage brokers who earned significant commissions on the sale of the SMI products. At this stage of the administration, the Trustee's efforts have largely been focused on seeking alternatives for the monetization of the underlying real estate projects in the best interests of the Investors, in most cases under very challenging scenarios. However, the Trustee has not lost sight of the concerns of the Investors and believes that with full access to the banking records of the Davies Developers, and in collaboration with the work of KSV, the Trustee should be able to fully understand the scope of what has transpired with Investors' money and report same to the Court and the Investors in due course. In parallel with this, the Trustee is aware that certain Investors have been in contact and met with at least two class action lawyers to pursue potential litigation against the parties involved with the SMIs. Furthermore, the Trustee has been in contact with the Royal Canadian Mounted Police, who are aware of the Investors' concerns with respect to the conduct of Mr. Singh, Mr. Davies and the mortgage brokers and investment advisors that promoted and sold the SMIs.
86. It is therefore the Trustee's view that the time has come to proceed in respect of the Boathaus Proceedings' expansion to include the six additional properties referenced in this Sixth Report.

87. Accordingly, the Trustee has made formal written demand on the applicable Davies Developers, which demands were accompanied by notices of intention to enforce security pursuant to subsection 244(1) of the BIA, copies of which are collectively attached as **Appendix "41"**. As reflected in the demands, the aggregate balance owing under the six SMIs in question exceeds \$50 million in principal and interest, exclusive of recovery costs and accruing interest.
88. As of the date of this Sixth Report, the applicable Davies Developers have each failed to make payment in accordance with the demands or make alternative arrangements acceptable to the Trustee.
89. In the circumstances set out above, the Trustee believes that it is just and equitable that the Boathaus Proceedings be expanded to include the Memory Care Properties, the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property. It is the Trustee's view that the proposed expansion of the Boathaus Proceedings is necessary for the protection of the Investors of the applicable SMIs and possibly other stakeholders. The Trustee believes that the proposed expansion of the Boathaus Proceedings would enhance the prospect of recovery by the Trustee for the Investors and protect all stakeholders.
90. The Trustee recommends that KSV continue its mandate as the receiver and manager in the Boathaus Proceedings and that such mandate be expanded to include the Memory Care Properties, the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property. KSV is licensed to act in this capacity and has gleaned additional familiarity with the Davies Developers as a result of the existing Boathaus Proceedings, as reflected by, amongst other things, the findings in the Boathaus Receiver's First Report. It is the Trustee's view that KSV's continued and expanded involvement will result in efficiencies for the benefit of the Investors.
91. KSV has consented to the expansion of the Boathaus Proceedings as proposed by this Sixth Report, should the Court grant such relief. A copy of KSV's consent is attached as **Appendix "42"**.

## **DEMAND OF BOOKS AND RECORDS FROM JOHN DAVIES AND THE DAVIES DEVELOPERS**

92. To date, despite several demands, the Trustee has not received the requested books and records from Mr. Davies, particularly the trust ledgers and the source and use of funds related to the Davies Developers. While H+H has provided the Trustee with its trust ledgers for the Davies Developers relating to each project, the Trustee made several requests (but has yet to receive) the Davies Developers' internal trust ledgers/bank statements relating to each project. As the Trustee has explained to Mr. Davies, the Trustee is looking to understand specifically how the funds received by the Davies Developers from H+H (on both Investor raises as well as third party raises) were used based on the Davies Developers' internal banking records.
93. Similarly, while the Trustee has received copies of the Davies' Developers internal financial statements, which provide a general summary of assets/expenses, the Trustee has made several requests (but has yet to receive) a detailed accounting of the use of the specific funds advanced from each SMI mortgage and each third-party mortgage.
94. In light of the serious concerns raised in the Boathaus Receiver's First Report, the Trustee is seeking an order compelling Mr. Davies and the Davies Developers to immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers.

## **APPROVAL OF THE TRUSTEE'S ACTIVITIES AND PROFESSIONAL FEES**

95. The Trustee's activities since the Appointment Order include, without limitation:
- administering the SMI portfolio;
  - corresponding, via counsel, with H+H to secure any funds held in interest reserve accounts;
  - investigating the history of the 16 SMIs and reviewing, with legal counsel, the various encumbrances on the underlying properties and the terms and conditions of the various agreements comprising the SMIs;

- reviewing and interpreting the limited information received from the Developers in respect of the SMIs and respective properties;
- holding meetings with Investors, including formal meetings for all Investors in the Memory Care SMIs, the Legacy Lane SMI, the 525 Princess SMI, the 555 Princess SMI and the 747 Bronson SMI;
- meetings with Representative Counsel and, in some cases, certain representatives of the Investors Committee;
- holding meetings with brokers and other stakeholders;
- corresponding with the Developers, Raj Singh and their counsel;
- corresponding with and fielding extensive written and telephone enquiries from Investors, the Investors Committee and Representative Counsel;
- holding discussions and exchanging correspondence with the first mortgagees on various properties;
- issuing formal update letters to the Investors for each of the 16 different SMIs;
- maintaining and updating the Trustee's website; and
- corresponding, meeting and negotiating with various parties to advance a transaction in respect of the Vaughan Crossings SMI (as defined in the Previous Reports).

96. Since the outset of these proceedings, the Trustee and its counsel have also deployed significant time and energy in dealing with Mr. Davies, the Davies Developers, their counsel and their network of contacts. The Previous Reports address, amongst other things, the varying levels of cooperation and transparency that the Trustee has encountered in these proceedings, which have required the Trustee to engage in many activities that need not have been as time consuming – if necessary at all – including, without limitation:



- assisting the Superintendent to obtain the Appointment Order, which included, amongst other things, replying to responding materials and submissions made in opposition to the Appointment Order by Mr. Davies and counsel for the Davies Developers;
- engaging in significant amounts of correspondence and communications with the Davies Developers and their counsel in an effort to obtain information about the various projects, both financial and otherwise, a great deal of which has still not been provided;
- responding to and preparing for the Stay Motion brought to the Divisional Court by the Davies Developers, which Stay Motion was dismissed;
- preparing for the Stay Motion and the Appeal brought to the Court of Appeal for Ontario by the Davies Developers, which Stay Motion and Appeal were eventually withdrawn by the Davies Developers;
- preparing for and examining the merits of the CCAA Application brought by most of the Davies Developers, which CCAA Application was dismissed;
- preparing for, examining the merits of and drafting materials for the McMurray Transaction, which the Davies McMurray Developer failed to advise would not be proceeding until the eleventh hour;
- engaging in significant amounts of correspondence and communications with the Davies Boathaus Developer in respect of its intentions to avoid enforcement by a prior-ranking mortgagee on the Boathaus Property, and finding replacement financing for the Boathaus Property and bringing a motion to commence the Boathaus Proceedings after repeated attempts to solicit a realistic solution from Mr. Davies went unanswered; and
- engaging in significant amounts of correspondence and communications with Representative Counsel and the Investors Committee in order to

address possible solutions for the other properties owned by the Davies Developers, most of which are also in default and in respect of which Mr. Davies has not advanced or implemented any workable cures, and ultimately finding replacement financing for certain of these properties and bringing this motion to expand the Boathaus Proceedings.

97. The Trustee and its independent legal counsel, A&B, have maintained detailed records of their professional time and costs since the Appointment Order was granted.
98. Pursuant to the terms of the Appointment Order, the Trustee and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court.
99. The total fees of the Trustee to and including March 31, 2017 amount to \$466,962.00, plus expenses and disbursements in the amount of \$9,817.82 and HST in the amount of \$61,981.38, totalling \$538,761.20. The details of the time spent and services provided by the Trustee (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Jonathan Krieger, Senior Vice-President of GTL who is involved in this matter, sworn April 17, 2017 in support hereof, a copy of which is attached as **Appendix "43"**.
100. The total legal fees incurred by the Trustee for services provided to it by its independent legal counsel, Aird & Berlis LLP, to and including March 31, 2017 amount to \$561,428.00, plus expenses and disbursements in the amount of \$20,047.18 and HST in the amount of \$75,304.41, totaling \$656,779.59. The details of the time spent and services provided by Aird & Berlis LLP (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Steven L. Graff, sworn April 13, 2017 in support hereof, a copy of which is attached as **Appendix "44"**.
101. The Trustee is of the view that these accounts are reasonable in the very challenging circumstances of these proceedings. Further to the points set out above, the Trustee is dealing with over \$100 million of Investors' investment across 16 real estate developments where all but three projects are in default.

To date, the Trustee has dealt with over a thousand stakeholders, including Investors and their advisors, developers, other mortgagees, lien claimants, creditors, contractors, financiers, and investor committee representatives, many of which have competing interests. The Trustee respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.

#### **PROPOSED ALLOCATION OF PROFESSIONAL FEES**

102. At the time of the Appointment Order, the Trustee and its counsel set up various groupings of dockets specific to certain Developers/properties in order to account for their work in respect of the administration of these proceedings. Where applicable, the Trustee and its counsel have recorded time to specific dockets in respect of a Developer. However, a significant amount of the Trustee and its counsel's work to date has been of a general nature, related to the Davies Developers or all of the Tier 1 Projects generally and not specifically allocable to a specific property. This general time includes, amongst other things, reviewing the allegations raised in the Marfatia Affidavit filed in support of these proceedings, consultation with the Superintendent, pursuing information in respect of the Davies Developers generally, dealing with the proposed CCAA proceedings, attending in Court, drafting related Court materials, preparing and administering general investor correspondence, maintaining the designated website for investor communications, maintaining the toll free telephone line, maintaining the designated email account, and answering and responding to thousands of investor emails and/or telephone calls. In respect of these services, the Trustee and its counsel have recorded their professional time to grouped dockets entitled Davies Allocation or General Account (the "**General Costs**").
103. The Trustee has carefully reviewed the dockets supporting the Davies Allocation and General Costs, including the nature of the work expended and the proportionate amount of time expended on each of the Properties. The Trustee has prepared the summary below (the "**Allocation Summary**") in respect of the Trustee's and its counsel's dockets, and proposes to allocate the fees, including the Davies Allocation and General Costs, as follows:

Tier 1

Trustee's Allocation of Time  
for the period ending March 31, 2017

	October 2016 - March 31 2017							
	Project Specific Time	Grouped WIP		General WIP				
		Textbook Allocation	Raj Singh Projects	All Projects	Subtotal	Disbursements	HST	Total
	\$ 135,697	\$ 112,711	\$ 28,491	\$ 190,062		\$ 9,818	\$ 61,981	\$ 538,761
<b>Properties</b>								
McMurray	\$ 7,220	\$ 6,082	\$ -	\$ 11,879	\$ 25,181	\$ 556	\$ 3,346	\$ 29,083
Vaughan Crossings	\$ 55,377	\$ -	\$ -	\$ 11,879	\$ 67,256	\$ 1,068	\$ 8,882	\$ 77,205
Boathaus	\$ 47,566	\$ 11,366	\$ -	\$ 11,879	\$ 70,811	\$ 1,295	\$ 9,374	\$ 81,480
445 Princess	\$ 280	\$ 7,002	\$ -	\$ 11,879	\$ 19,161	\$ 387	\$ 2,541	\$ 22,089
525 Princess	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
555 Princess	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
Legacy Lane	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
Ross Park	\$ -	\$ 9,764	\$ -	\$ 11,879	\$ 21,643	\$ 559	\$ 2,886	\$ 25,088
Bronson	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
Memory Care- Burlington	\$ -	\$ 11,919	\$ -	\$ 11,879	\$ 23,798	\$ 559	\$ 3,166	\$ 27,523
Memory Care- Oakville	\$ -	\$ 11,919	\$ -	\$ 11,879	\$ 23,798	\$ 559	\$ 3,166	\$ 27,523
Memory Care- Kitchener	\$ -	\$ 11,919	\$ -	\$ 11,879	\$ 23,798	\$ 559	\$ 3,166	\$ 27,523
Silver Seven	\$ 25,254	\$ -	\$ -	\$ 11,879	\$ 37,133	\$ 587	\$ 4,904	\$ 42,624
Guildwood	\$ -	\$ -	\$ 9,497	\$ 11,879	\$ 21,376	\$ 485	\$ 2,842	\$ 24,703
Hazelton	\$ -	\$ -	\$ 9,497	\$ 11,879	\$ 21,376	\$ 485	\$ 2,842	\$ 24,703
Keele Medical	\$ -	\$ -	\$ 9,497	\$ 11,879	\$ 21,376	\$ 485	\$ 2,842	\$ 24,703
	\$ 135,697	\$ 112,711	\$ 28,491	\$ 190,062	\$ 466,962	\$ 9,818	\$ 61,981	\$ 538,761

Tier 1

A&B's Allocation of Time  
for the period September 20, 2016 to March 31, 2017

	WIP Allocation			
	Subtotal	Disbursements	HST	Total
	\$ 561,428	\$ 20,047	\$ 75,304	\$ 656,780
<b>Properties</b>				
McMurray	\$ 16,536	\$ 598	\$ 2,219	\$ 19,354
Vaughan Crossings	\$ 121,662	\$ 3,175	\$ 16,168	\$ 141,004
Boathaus	\$ 86,361	\$ 3,331	\$ 11,615	\$ 101,308
425 Princess	\$ 24,235	\$ 971	\$ 3,264	\$ 28,469
525 Princess	\$ 28,747	\$ 1,162	\$ 3,873	\$ 33,781
555 Princess	\$ 28,747	\$ 1,162	\$ 3,873	\$ 33,781
Legacy Lane	\$ 30,604	\$ 1,175	\$ 4,116	\$ 35,895
Ross Park	\$ 15,741	\$ 592	\$ 2,115	\$ 18,448
Bronson	\$ 28,747	\$ 1,162	\$ 3,873	\$ 33,781
Memory Care- Burlington	\$ 29,543	\$ 1,167	\$ 3,977	\$ 34,687
Memory Care- Oakville	\$ 29,543	\$ 1,167	\$ 3,977	\$ 34,687
Memory Care- Kitchener	\$ 29,543	\$ 1,167	\$ 3,977	\$ 34,687
Silver Seven	\$ 45,789	\$ 1,454	\$ 6,121	\$ 53,363
Guildwood	\$ 15,210	\$ 588	\$ 2,046	\$ 17,844
Hazelton	\$ 15,210	\$ 588	\$ 2,046	\$ 17,844
Keele Medical	\$ 15,210	\$ 588	\$ 2,046	\$ 17,844
	\$ 561,428	\$ 20,047	\$ 75,304	\$ 656,780

104. The Trustee respectfully requests this Court issue an order approving the Allocation Summary outlined above. If approved, in a later report, the Trustee will present to the Court an allocation of professional fees and disbursements for the period of April 1, 2017 onwards, which allocation may differ from this Allocation Summary, based on the nature of work expended and area of focus going forward.
105. While the Trustee has prepared this Allocation Summary and seeks approval of the Trustee and its counsel's fees and disbursements, there are certain Tier 1 Trustee Corporations where there are currently no funds available to satisfy the fees and disbursements as set out in the Allocation Summary.
106. The Trustee is of the view that, at this stage of the proceedings, the proceeds of realization (or funds held in the Trustee's respective trust accounts) for each Tier 1 Trustee Corporation should remain ring fenced in the trust account for the respective property. In the future, the Trustee may make further recommendations to the Court regarding the possible repatriation of proceeds between Tier 1 Trustee Corporations, which recommendation will likely be made in the context of a future distribution motion.
107. In order to respect the proposed ring fence, the Trustee and its counsel will not be able to satisfy the payment of all of their fees and disbursements as set out in the Allocation Summary until such time as there are proceeds of realization or other receipts in respect of all of the properties.

#### **INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

108. A copy of the Trustee's interim statement of receipts and disbursements as at April 12, 2017 is attached hereto as **Appendix "45"** (the "**Interim R&D**"), which does not yet reflect drawing the fees and disbursements set out in the Allocation Summary. The Interim R&D reflects the cash currently in the respective trust accounts, which amounts will increase as properties are monetized throughout the Trustee's administration.

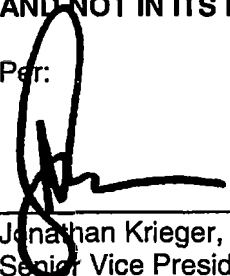
**CONCLUSION AND RECOMMENDED RELIEF**

109. 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:



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

28378018.9

# 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

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

Charges, including, without limitation, all monies held by way of interest reserve to satisfy interest payments to such investors or beneficiaries, which Trust Funds are to be held or used by the Trustee in accordance with the terms of this Order and any further Order of this Court; and (ii) upon the Trustee's request, provide an accounting of all funds received from or on behalf of the Respondents or their associated businesses.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee 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 any of the Respondents, 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 Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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 Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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 Trustee for the purpose of allowing the Trustee 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 Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Trustee shall provide each of the relevant landlords with notice of the Trustee'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 Trustee'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 Trustee, or by further Order of this Court upon application by the Trustee on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE TRUSTEE**

9. **THIS COURT ORDERS** that, with the exception of each of the NOP (as defined in the Supporting Affidavit), the Suspension Order (as defined in the Supporting Affidavit) and the Compliance Order (as defined in the Supporting Affidavit), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY**

10. **THIS COURT ORDERS** that, with the exception of each of the NOP, the Suspension Order and the Compliance Order: (i) no Proceeding against or in respect of the Respondents, or any of them, or the Property shall be commenced or continued except with the written consent of the Trustee or with leave of this Court; and (ii) any and all Proceedings currently under way against or in respect of the Respondents, or any of them, or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that, with the exception of each of the NOP, the Suspension Order and the Compliance Order, all rights and remedies against each of the Respondents, the Trustee, or affecting the Property, are hereby stayed and suspended except with the written consent of the Trustee 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 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Trustee or the Respondents 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 TRUSTEE**

12. **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 any of the Respondents, without written consent of the Trustee or leave of this Court.

#### **CONTINUATION OF SERVICES**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondents, or any of them, 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 Respondents 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 Trustee, and that the Trustee shall be entitled to the continued use of the Respondents' 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 Trustee in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

#### **TRUSTEE TO HOLD FUNDS**

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee 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 Trustee (the "**Post Trusteeship Accounts**") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

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

## **PIPEDA**

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Trustee 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 Trustee, 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 Respondents, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee 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 Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee'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 TRUSTEE'S LIABILITY**

18. **THIS COURT ORDERS** that the Trustee 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 subsections 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 Trustee by section 14.06 of the BIA or by any other applicable legislation.

#### **TRUSTEE'S ACCOUNTS**

19. **THIS COURT ORDERS** that the Trustee and counsel to the Trustee 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, which fees and disbursements shall be added to the indebtedness secured by the Real Property Charges, and that the Trustee and counsel to the Trustee shall be entitled to and are hereby granted a charge (the "**Trustee'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 Trustee'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 subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Trustee 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 Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE APPOINTMENT**

22. **THIS COURT ORDERS** that the Trustee 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 \$300,000.00 (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 Trustee 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 "**Trustee'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 Trustee's Charge and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Trustee's Borrowings Charge nor any other security granted by the Trustee in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Trustee is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Trustee's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee'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 Trustee's Certificates.

#### **SERVICE AND NOTICE**

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, 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 of the *Rules of Civil Procedure* (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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.grantthornton.ca/tier1>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee 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 Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Respondents 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**

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Trustee from acting as a trustee in bankruptcy of any of the Respondents.

30. **THIS COURT ORDERS** that Confidential Exhibit "A" and Confidential Exhibit "B" to the Supporting Affidavit be and are hereby sealed until further Order of this Court.

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 Trustee 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 Trustee, as an officer of

this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Trustee 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 Trustee 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 any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice, or such shorter period of time as the Court may permit, 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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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 27 2016

PER / PAR: 

**SCHEDULE "A"**

**TRUSTEE CERTIFICATE**

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

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

1. **THIS IS TO CERTIFY** that Grant Thornton Limited., the Trustee (in such capacities, the "Trustee") 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**"), including all of the assets held in trust by the Respondents on behalf of syndicated mortgage investors (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 27<sup>th</sup> day of October, 2016 (the "**Order**") made in an action having Court file number CV-16-11567-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Trustee is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), 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 Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee 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 Trustee to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Trustee 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 \_\_\_\_\_, 2016.

**GRANT THORNTON LIMITED**, solely in its capacity as Trustee of the Property (as defined in the Order), and not in its personal capacity

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

Name: Jonathan Krieger

Title: Senior Vice President

**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

**APPOINTMENT ORDER**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

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*Lawyers for the Applicant, The Superintendent of  
Financial Services*





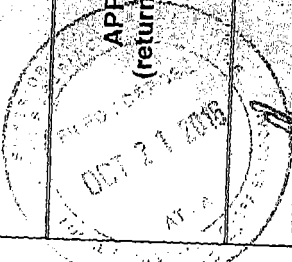
Applicant

Respondents

October 27, 2016

In my view, the appropriate relief to protect the interests of the beneficiaries of the trust is to appoint a trustee to protect the interests of the beneficiaries of the trust.  
Exhibits prepared by applicant to be filed.  
Dated:

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceedings commenced at Toronto



APPLICATION RECORD  
(returnable October 27, 2016)  
(Volume 1 of 3)

THE SUPERINTENDENT OF FINANCIAL SERVICES  
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Lawyers for the Applicant, The Superintendent of  
Financial Services



**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**

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**UNOFFICIAL TRANSCRIPTION OF THE ENDORSEMENT OF  
THE HONOURABLE JUSTICE NEWBOULD  
DATED OCTOBER 27, 2016**

---

October 27, 2016

In my view, the appointment of Grant Thornton as Trustee is the appropriate relief to protect the interests of the investors. Order to go. Ex A & B to affidavit of applicant to be sealed.

Newbould, J.

# TAB 2

Div. Ct. File No. 535/16  
Court File No. CV-16-11567-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)  
(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**

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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**

**FIRST REPORT OF THE TRUSTEE**

**NOVEMBER 10, 2016**

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

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- Appendix F Correspondence between the Trustee and Mr. Davies to schedule a meeting
- Appendix G Trustee's correspondence with Mr. Davies related to the information request and a list of Mr. Davies' Initial Information
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)  
(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**

**FIRST REPORT OF THE TRUSTEE**

**NOVEMBER 10, 2016**

**INTRODUCTION**

1. This report (the "**First 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 "A"** (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. This First Report is filed in the context of a motion (the "**Stay Motion**") returnable on November 14, 2016 before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**"), which has been brought by 11 of the Developers (the "**Moving Parties**").<sup>1</sup> In substance, the Stay Motion seeks a stay of paragraphs 5 and 19 of the Appointment Order pending the hearing of the Moving Parties further motion to the Divisional Court for leave to appeal the Appointment Order (the "**Leave to Appeal Motion**").
4. 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.
5. 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 Moving Parties (for 11 of the 16 SMIs) and other Developers (for the remaining 5 SMIs) are the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;

---

<sup>1</sup> The Moving Parties 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.

- (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**"), 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.
6. 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 (including many of the Moving Parties) and the sole director, officer and shareholder of all but two of the 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.
7. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage 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 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.

8. 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, such that the true values may be inadequate to cover the respective SMLs.
9. Apart from the Marfatia Affidavit, responding affidavits to the Application were also sworn by each of John Davies (one of the principals of the Moving Parties in the present Stay Motion, which was filed in opposition to the Appointment) and Gregory Harris (the lawyer at Harris + Harris LLP ("**H+H**") with custody of the trust accounts that essentially forms the subject matter of the Stay Motion).
10. The Trustee understands that the Superintendent has filed or will shortly file each of the Marfatia Affidavit and the responding affidavits thereto as part of the Superintendent's responding materials to the Stay Motion.
11. 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).

#### **PURPOSE AND DISCLAIMER**

12. This First Report has been prepared for the use of the Commercial List Court, the Divisional Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations and to assist the Divisional Court in making a determination of whether to approve the relief sought by the Moving Parties in the Stay Motion. Accordingly, the reader is cautioned that this First 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 First Report for any other purpose.
13. In preparing this First 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, 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.

14. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

#### **CONCERNS RAISED BY THE MOVING PARTIES**

15. Prior to its appointment, GTL and its counsel met with John Davies (on behalf of the Moving Parties) and the Moving Parties' counsel, Raj Singh and his counsel and Gregory Harris on October 25, 2016 to discuss the affairs of the Tier 1 Trustee Corporations and the Developers, on a without prejudice basis (the "**October 25 Meeting**").
16. As a result of what was discussed at that meeting, both Gregory Harris and John Davies swore their responding affidavits to GTL's pending appointment (respectively, the "**Harris Affidavit**" and the "**First John Davies Affidavit**", and collectively, the "**Responding Affidavits**"), addressing concerns with respect to what they perceived to be the impact of the proposed appointment, including how the appointment would be funded, the scope of the mandate and the treatment of funds held in trust by H+H. The Responding Affidavits were served on the afternoon preceding the hearing, and resulted in certain changes being made to the proposed form of Appointment Order, which changes were served prior to the commencement of the hearing.
17. Attached as **Appendix "B"** is a cumulative blackline form of Order, reflecting the differences between the form of Order originally proposed in the Superintendent's materials and the Appointment Order obtained from the Commercial List Court. In response to what was discussed and requested at the October 25 Meeting, the terminology used to describe GTL's role was changed from receiver and manager to trustee. Also added to the Order as a result of the October 25 Meeting and the Responding Affidavits was certain "for greater certainty" and related language in the paragraphs of the Appointment Order that are now subject to the Stay Motion.

18. Prior to making the Appointment Order, each of the Superintendent's counsel, the Moving Parties' counsel, Raj Singh's counsel, H+H and the then-proposed Trustee's counsel made submissions in Chambers to the Honourable Justice Newbould in regards to the issues that are now the subject of the Stay Motion, which submissions resulted in the Appointment Order being granted. Amongst other things, His Honour recognized that the Trustee could not fulfill its mandate to protect the Investors' interests without access to the funds held in trust by H+H.

#### **TRUSTEE'S REQUESTS FOR INFORMATION**

19. The following section outlines the Trustee's requests for information related to the Tier 1 Trustee Corporations and the Trustee's interactions with each party.

#### H+H

20. Both the Marfatia Affidavit and the Harris Affidavit explain that the Syndication Mortgage Participation Agreements between the applicable Tier 1 Trustee Corporation and the Investors require the Tier 1 Trustee Corporation or its solicitor to hold interest holdback monies in trust for the Investors, and that H+H assumed responsibility of these monies from the Tier 1 Trustee Corporations' solicitor.
21. H+H provided the Trustee with copies of H+H's trust ledgers in respect of which monies were being held in trust for the Investors, which trust ledgers and associated accounts appear to be segregated on a project-by-project basis, and which trust ledgers were also attached as exhibits to the Harris Affidavit (collectively, the "**Trust Ledgers**").
22. The Trust Ledgers reflect that at least six of the 11 mortgages in respect of which the Moving Parties are developers/borrowers were in default of their interest obligations to the corresponding Tier 1 Trustee Corporations prior to the Appointment of the Trustee for failure to make a quarterly interest payment. Despite requests by the Trustee (as outlined below), neither Raj Singh nor John Davies has provided the Trustee with evidence of any steps taken by the Tier 1 Trustee Corporations to cure or otherwise address these defaults or take

enforcement action in respect of same, despite the obligations to do so (as outlined earlier in this First Report and discussed in more detail in the Marfatia Affidavit).

23. On October 28, 2016, the Trustee sent a letter to H+H requesting certain information related to, amongst other things, details of the Investors and the funds held on their behalf in H+H's trust accounts (the "**Trust Funds**").
24. H+H provided a preliminary response on October 31, 2016 addressing certain general questions, and the Trustee responded with an email on October 31, 2016 asking for additional information.
25. As of the date of this First Report, H+H has provided the majority of the requested information for two of the 16 projects, and has advised that additional material for the other projects will be provided.
26. Copies of the Trustee's letter dated October 28, 2016, H+H's response on October 31, 2016 and the Trustee's email on October 31, 2016 are collectively attached hereto as **Appendix "C"**.
27. On November 2, 2016, in accordance with paragraph 5 of the Appointment Order, Aird & Berlis LLP ("**A&B**"), counsel to the Trustee, sent a letter to H+H requesting that the Trust Funds (excluding RRSP or other register funds) be delivered to the Trustee by November 4, 2016.
28. On November 4, 2016, H+H responded with a letter to A&B explaining that before the Trust Funds could be delivered, H+H must cancel all post-dated cheques that are in the hands of Investors, which could take approximately 40 hours, and requested an extension to deliver the Trust Funds.
29. Later on November 4, 2016, A&B responded with a letter to H+H extending the time by which H+H may deliver the Trust Funds to the Trustee to no later than November 7, 2016, and requested that H+H focus its efforts to cancel cheques on a single account at a time and transfer the Trust Funds to the Trustee on an account by account basis upon the final cheque being cancelled on that account.

30. Despite advising in an email chain on November 8, 2016 that it hoped to begin wiring funds the next day, H+H did not do so.
31. Copies of the correspondence amongst A&B, H+H and the Trustee are attached hereto as **Appendix "D"**.
32. As of the date of this First Report, the Trustee has still not received any of the Trust Funds from H+H.

Raj Singh

33. On October 31, 2016, the Trustee met with Raj Singh, in his capacity as controlling mind of the Tier 1 Trustee Corporations, as principal stakeholder of three of the Developers (the "**Singh Developers**") and a further stakeholder in certain of the Moving Parties.
34. During the meeting, Mr. Singh confirmed that several of the Moving Parties' mortgages are in default, and also advised the Trustee of other mortgages being in default.
35. Mr. Singh also advised the Trustee that the Tier 1 Trustee Corporations do not have any books or records of their own and that all Investor and SMI information is held by the mortgage brokerages, which the Trustee understands share an office with Mr. Singh and Tier 1 Transaction and/or Tier 1 Mortgage.
36. Mr. Singh undertook to provide the Trustee with a number of documents, which the Trustee requested in a letter to Mr. Singh dated November 1, 2016, a copy of which is attached hereto as **Appendix "E"**.
37. The nature of the Trustee's requests for information from Mr. Singh included, amongst other things:
  - (i) information related to the Investors;
  - (ii) the status of the projects of the Singh Developers;

- (iii) a detailed accounting of the use of funds from the mortgages by the Singh Developers;
  - (iv) information related to mortgages ranking ahead or behind the mortgages held by the Tier 1 Trustee Corporations on the Singh Developers' projects;
  - (v) the status of the projects controlled by other Developers, including, without limitation, the Moving Parties, as reported by the Developers to the respective Tier 1 Trustee Corporation;
  - (vi) details of any actions taken by the Tier 1 Trustee Corporations in respect of mortgages that are in default; and
  - (vii) other details in respect of the mortgages.
38. As of the date of this First Report, and despite the Trustee having followed-up with Mr. Singh on November 7, 2016, Mr. Singh has only provided the Trustee with certain limited information in respect of the Investors. No information has been provided in respect of the other items enumerated in the above paragraph.

John Davies

39. Immediately after the Appointment Order was granted, the Trustee scheduled a meeting with John Davies for October 28, 2016, in his capacity as controlling mind of the Moving Parties, being a number of the Developers. The Trustee in part scheduled the meeting as an urgency, to respond to the urgencies raised by John Davies in the October 25 Meeting and the First John Davies Affidavit.
40. On October 27, 2016, Mr. Davies advised that he would have to postpone the meeting to the following week.
41. On October 31, 2016, after multiple follow-ups by the Trustee, Davies requested to postpone the meeting to November 3, 2016 or November 4, 2016. The Trustee responded by confirming the meeting for November 3, 2016.



42. Mr. Davies later requested, after a second confirmation by the Trustee for the November 3, 2016 meeting, that the meeting be postponed further to November 10, 2016 or November 11, 2016.
43. Copies of the correspondence related to the scheduling of the meeting, including the Trustee's request to expedite the meeting due to its importance to the administration of these proceedings, is attached hereto as **Appendix "F"**.
44. In light of John Davies' refusal to expedite the meeting, the Trustee sent a letter to Mr. Davies on November 2, 2016 requesting information related to the Moving Parties and the mortgages registered against them by the Tier 1 Trustee Corporations.
45. The nature of the Trustee's requests for information from Mr. Davies included, amongst other things:
  - (i) the status of the projects of the Moving Parties, including the Moving Parties' plans and intentions to repay the mortgages in favour of the Tier 1 Trustee Corporations;
  - (ii) an accounting of the use of funds from these mortgages by the Moving Parties;
  - (iii) information related to mortgages ranking ahead or behind the mortgages held by the Tier 1 Trustee Corporations on the Moving Parties' projects; and
  - (iv) information related to any correspondence with Investors (as one of John Davies' emails included in Appendix F explains that he is having 'town hall' meetings with Investors). The Trustee requested that Mr. Davies: (a) provide the Trustee with draft copies of any correspondence intended for the Investors so that the Trustee can review and approve such communications in advance; and (b) provide the Trustee with advance notice and details of any meetings scheduled with the Investors so that the Trustee may consider the necessity of any such meetings and have the ability to attend.

46. The Trustee believes that in accordance with the mortgage agreements with the Moving Parties (as with other Developers as well) and the terms of the Appointment Order, it is the Trustee's responsibility to ask these questions (as it was the responsibility of the Tier 1 Trustee Corporations prior to the Appointment Order). As the Trustee has been empowered by the Court to protect the Investors' interests as against the Moving Parties, the Trustee also has concerns about the Moving Parties communicating with the Investors without the Trustee's involvement.
47. The Trustee has received a substantial number of inquiries from Investors who have serious concerns with respect to the status of the projects, the lack of reporting from the Tier 1 Trustee Corporations, the lack of transparency with respect to their investments, the nature of Raj Singh's purported undisclosed interest in certain of the Developers' projects and the existence of defaults by the Moving Parties specifically and the Developers generally.
48. Further, the Trustee has concerns (which have also been expressed by certain Investors) that both the First John Davies Affidavit and the affidavit sworn by Mr. Davies in support of the Stay Motion state, without providing any accounting, that the mortgage funds received by the Moving Parties from the Tier 1 Corporations have been fully-expended. According to information received by the Trustee from H+H, the most recent SMI (for the property municipally known as 445 Princess Street) raised \$4,295,300, \$2,241,150 and \$1,860,300 from Investors in July 11, 2016, August 22, 2016 and September 28, 2016, respectively.
49. On November 7, 2016, John Davies provided very limited relevant information related to the projects controlled by the Moving Parties (the "**Davies' Initial Information**") and failed to address almost any of the key concerns and requests raised by the Trustee.
50. The Davies' Initial Information, while voluminous, mostly includes development materials about each project, and fails to provide any insight into the status of the projects with respect to the Moving Parties' plan or ability to repay the respective mortgages upon maturity or cure any defaults. The Davies' Initial Information also fails to address the Trustee's questions related to the Moving Parties' use of

funds of the mortgages. The Davies' Initial Information did include information related to pro-forma analyses and projected use of funds of certain of the projects of the Moving Parties, without reflecting whether these projections were achieved.

51. The Trustee advised Mr. Davies of the shortcomings with the Davies' Initial Information by way of a letter dated November 7, 2016, which listed the outstanding information.
52. Mr. Davies responded to the Trustee's November 7, 2016 letter by email on November 8, 2016, explaining that he has not had sufficient time to prepare the remaining information and does not provide a timeline to provide same.
53. Copies of the Trustee's November 2, 2016 letter, a summary of the Davies' Initial Information, the Trustee's November 7, 2016 letter and Mr. Davies' November 8, 2016 email are attached hereto as **Appendix "G"**.

#### **INVESTOR CORRESPONDENCE**

54. The Trustee has been provided by Raj Singh with contact information for over two thousand unique investors. Since its appointment, the Trustee set up a 1-800 hotline telephone number and dedicated email address for Investors to contact the Trustee with questions, both of which were posted to the Trustee's website and provided to Raj Singh to forward to Investors who contact him.
55. The Trustee also sent a letter to Investors advising them of the proceedings generally and providing an update on the administration to date. A copy of this letter was also posted to the Trustee's website and is attached hereto as **Appendix "H"**.
56. In addition to the general concerns raised by Investors, a number of Investors have raised the following specific concerns:

- (i) several Investors reported rumours that the Trustee has issued an invoice to certain of the Moving Parties for over \$300,000. The Trustee confirmed to these Investors that this is untrue;
  - (ii) several Investors reported rumours that the Trustee has refused to provide approval for construction financing to some of the Moving Parties which could jeopardize the development of their projects. The Trustee confirmed to these investors that neither the Moving Parties, nor any of the Developers, has contacted the Trustee to discuss construction financing; and
  - (iii) several Investors reported that John Davies is planning further Investor 'town halls' with a view to seeking support to replace the Trustee.
57. To date, the Trustee has been advising Investors that it has submitted requests for information to the Developers and once it has information related to the SMIs, it will proactively keep Investors apprised of the status of the Developers' projects (i.e., the Investors' security).

#### **STATUS OF THE MORTGAGES**

58. As described above, the Trustee has not yet been provided with relevant information with respect to the statuses of the mortgages from John Davies or Raj Singh.
59. Based on the Trustee's preliminary discussions with Raj Singh, its review of the Marfatia Affidavit and its review of the Trust Ledgers, the Trustee has prepared the following summary of the status of the various SMIs:

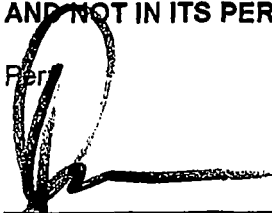
Project Name	Controlling Mind of Developer	Default on Oct 1/16 interest per H&H Trust Ledgers?	Note per Conversation with Singh	Note per Maratia Affidavit
445 Princess Street	Davies	N		
525 Princess Street	Davies	N		
555 Princess Street	Davies	N		
774 Bronson Avenue	Davies	N		
Highlights Mississauga Condo-miniums and Towns	Singh	N		
Legacy Lane	Davies	Y	Mortgage Due	Due on Dec 31/15
Keele Medical	Singh	N		Due on Nov 1/16
Guildwood	Singh	N		
Memory Care Burlington	Davies	Y		
Memory Care Kitchener	Davies	Y		
Memory Care Oakville	Davies	Y	Mortgage Due	Due on Oct 29/16
Muskoka (McMurray St.)	Davies	Y	Mortgage Due	Due on Apr 30/16
Ross Park	Davies	N		
Silver Seven		N		Due on Jan 22/16
Vaughan Crossings	Private receiver appointed	Y		Due on Sep 30/15
Boathaus	Davies	Y	Oct 1/16 payment was missed	

60. As indicated in the above table and earlier in this First Report, the limited information currently available to the Trustee reflects that a number of the SMIs are in default, including at least six of the Moving Parties 11 projects, and the Trustee is working actively to determine the best course(s) of action in respect of the SMIs, including the calling of Investor meetings where appropriate.

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



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

27622550.2

# TAB 3

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  
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2006, c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c.  
C.43**

**SECOND REPORT OF THE TRUSTEE**

**NOVEMBER 28, 2016**



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



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## **CONFIDENTIAL APPENDIX**

- Confidential Appendix 1 Letter from WeirFoulds LLP dated November 24, 2016

**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**

**SECOND REPORT OF THE TRUSTEE**

**NOVEMBER 28, 2016**

**INTRODUCTION**

1. This report (the "**Second 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 "A"** (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 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, such that the true values may be inadequate to cover the respective SMIs.
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")). 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 "**Moving Parties**"),<sup>1</sup> In substance, the Stay Motion sought a stay of certain paragraphs of the Appointment Order pending the hearing of the Moving Parties' 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 is attached without appendices as **Appendix "B"**.
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 Moving Parties. 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 Second Report.
11. The Divisional Court dismissed the Stay Motion and ordered the Moving Parties to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). To date, the Moving Parties have not satisfied the Cost Award.
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 date for the hearing of the Appeal

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<sup>1</sup> The Moving Parties 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.

has not yet been set. The Trustee understands that the Moving Parties are now also pursuing the Stay Motion at the Court of Appeal for Ontario, which Stay Motion has been scheduled for December 7, 2016.

13. The purpose of this Second Report is to provide the Court and the stakeholders with information on the Trustee's activities to date as well as information on some of the challenges encountered by the Trustee in performing its mandate as a result of the actions or omissions of certain parties.
14. 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**

15. This Second 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 Second 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 Second Report for any other purpose.
16. In preparing this Second 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.
17. All references to dollars in this Second Report are in Canadian currency unless otherwise noted.

#### **TRUSTEE'S REQUESTS FOR INFORMATION**

18. The First Report summarizes the Trustee's requests to each of H+H, Raj Singh and John Davies for information related to the Tier 1 Trustee Corporations and

the Trustee's interactions with these parties. The following section provides an update on these interactions and the information provided by each of the parties to date.

#### H+H

19. As outlined in the First Report, the Trustee sent a letter to H+H on October 31, 2016 requesting certain information related to, amongst other things, details of the Investors and the funds held on their behalf in H+H's trust accounts (the "Trust Funds").
20. As of the date of the Second Report, H+H has provided the majority of the requested information for three of the 16 projects. The Trustee continues to follow up with H+H for the information related to the remaining 13 projects.
21. As also outlined in the First Report, the Appointment Order requires H+H to deliver the Trust Funds (excluding RRSP or other registered funds) to the Trustee, and a formal request was made on November 2, 2016 to H+H in this regard. On November 4, 2016, H+H indicated that it required approximately 40 business hours to address the administrative issues involved in transferring the Trust Funds.
22. As of the date of the Second Report, the Trustee has only received the Trust Funds for three of the six accounts in which there appears to have been a balance held by H+H as at the date of the Appointment Order.
23. No reasonable explanation has been given by H+H for the continued delay, and it is unclear as to what purported basis or in what purported capacity H+H continues to retain the balance of the Trust Funds. Correspondence with H+H in regards to the Trustee's repeated requests for delivery of the Trust Funds in accordance with the terms of the Appointment Order is attached as **Appendix "C"**.

#### Raj Singh

24. Since the date of the First Report, Mr. Singh (either directly or through H+H) has provided the Trustee with the majority of the requested information in his capacity



as controlling mind of the Tier 1 Trustee Corporations and certain of the requested information in his capacity as principal stakeholder of three of the Developers (the "**Singh Developers**", distinct from the Moving Parties).

25. The Trustee is in the process of reviewing the information provided by Mr. Singh, and has been in touch with Mr. Singh's counsel to obtain certain outstanding information, being a detailed accounting of the use of funds raised by the Singh Developers as well as a summary of the statuses of each project controlled by the Singh Developers.

John Davies

26. The First Report summarized the nature of the Trustee's requests from Mr. Davies, including the limited information that had been provided by Mr. Davies as of the date of the First Report.
27. On November 10, 2016, the Trustee had what it believed at the time to be a productive meeting with Mr. Davies, Walter Thompson (co-president, with Mr. Davies, of the Moving Parties), the Moving Parties' counsel and A&B. During this meeting, the attendees discussed, amongst other things, the Trustee's requests for information and, in particular, one of the projects of the Moving Parties that required the Trustee's immediate attention (the "**Boathaus Project**") as a result of a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) having been issued by a prior-ranking mortgagee on title in respect of the Boathaus Project (the "**Section 244 Notice**").
28. Mr. Davies advised that his staff were in the process of preparing responses to the Trustee's requests and that the information would be forthcoming. Mr. Davies also indicated that a detailed summary of each of the projects would also be forthcoming, and advised that the first few summaries would be provided within two days of the November 10 meeting. Shortly before the finalization of this Second Report, Mr. Davies had still not provided the Trustee with any additional information (other than the Section 244 Notice and a commitment letter and term sheet for construction financing for the Boathaus Project, in respect of which Mr. Davies was seeking a postponement from the Trustee). Copies of the

repeated follow-up correspondence with Mr. Davies is attached as **Appendix "D"**.

29. Mr. Davies' failure on a timely basis to provide the Trustee with meaningful information on the projects controlled by the Moving Parties, including the Boathaus Project in particular, has seriously impacted the ability of the Trustee to carry out its mandate, to respond to the Investors' numerous questions and make decisions in respect of these projects.
30. On or around the close of business on November 24, 2016, the Trustee and its counsel were informed for the first time that counsel had been engaged by the Moving Parties for the purpose of a proposed filing under the *Companies' Creditors Arrangement Act (Canada)* (the "**CCAA**"), and were asked to attend a meeting to discuss same the next day. As a result of that meeting, and on the eve of the finalization of this Second Report, certain of the requested information from Mr. Davies began to flow to the Trustee, which the Trustee is now reviewing. The information provided does not include a detailed accounting of the use of funds raised by the Moving Parties, which has been requested on numerous occasions by the Trustee and is still outstanding as of the date of this Second Report. A copy of the November 24, 2016 letter advising of the contemplated CCAA filing is attached as **Confidential Appendix "1"**.

#### **TRUSTEE'S ATTENDANCE AT INVESTOR MEETING AND INTERFERENCE WITH TRUSTEE'S MANDATE**

31. The Trustee was invited to attend at an Investor meeting on Sunday, November 13, 2016 at the request of Tamara Adamson, a mortgage broker who placed Investor funds in certain of the SMIs (the "**November 13 Investor Meeting**"). The purpose of the November 13 Investor Meeting was, amongst other things, for the Trustee and its counsel, Aird & Berlis LLP ("**A&B**"), to speak and answer questions about its mandate and the information it had obtained in respect of the SMIs and the underlying real estate projects. Certain of the comments raised by Investors at this meeting mirrored those concerns identified by the Trustee in its First Report, which had been issued a few days earlier, namely:

- (i) several Investors reported and insisted upon rumours that the Trustee had already taken hundreds of thousands of dollars to satisfy its fees;
- (ii) several Investors reported and insisted upon rumours that the Trustee has refused to provide approval for construction financing to some of the Moving Parties which could jeopardize the development of their projects; and
- (iii) several Investors reported and insisted that efforts were being made to replace the Trustee.

32. Since serving the First Report on November 10 and attending at the November 13 Investor Meeting, the Trustee has managed to identify some of the sources of the above comments.

#### The Lantos Investor Communication

33. On November 12, 2016 Peter Lantos, a mortgage broker who placed approximately \$3.5 million of Investors into the SMIs, issued an email communication to his clients (the "**Lantos Investor Communication**").

34. The Lantos Investor Communication referred to the First Report and contained several factual inaccuracies and unsubstantiated and improper accusations against the Trustee, including:

- (i) that the Trustee had "*already taken \$428,700 in fees*" when, in fact, no such fees of this amount, or any amount, had even been invoiced, much less taken by the Trustee;
- (ii) that he had "*confirmation and proof of [item (i)] from both Harris + Harris and from Grant Thornton's own lawyers!*," when he had no such confirmation or proof, as no fees of any amount had been invoiced, much less taken, by the Trustee;
- (iii) that "*[e]verything was on track before FSCO and Grant Thornton stepped in,*" when, in fact, on their face, several of the SMIs were already in

default prior to the Trustee's appointment (including, without limitation, interest obligation defaults on October 1, 2016 for six of the 11 SMIs in respect of which the Moving Parties are developers/borrowers); and

(iv) that he was concerned about the Trustee's supposed "*interference and own agenda*," stating that the Trustee's "*objective is to create anxiety among [the] investors*," when, in fact, the Trustee's mandate as an independent officer of the Court is to protect the interests of the investors in accordance with the terms of the Appointment Order.

35. The Lantos Investor Communication also encouraged his clients to disregard the Trustee's request for Investors to submit their contact information to the Trustee to facilitate future communications.
36. The Trustee was alarmed by the content in the Lantos Investor Communication, the inaccuracies of which would mislead Investors, cause unnecessary confusion and panic and ultimately put their interests at further risk. At the Trustee's insistence, Mr. Lantos eventually issued a formal retraction of the Lantos Investor Communication on November 21, 2016 by way of emails to 43 different investors (or joint investors).
37. Copies of the Lantos Investor Communication, the resulting correspondence between the Trustee and Mr. Lantos and Mr. Lantos' template retraction email (all redacted to protect the identity of Investors) are attached hereto as **Appendix "E"**.

#### John Davies

38. As outlined above, John Davies is the principal of the Moving Parties, which had initially filed materials to oppose the Appointment Order and then brought the Stay Motion (both of which efforts were unsuccessful) and has now brought the Appeal and the Stay Motion before the Court of Appeal for Ontario (both of which are pending).
39. As discussed in the First Report and above in this Second Report, the Trustee has continued to experience difficulties in obtaining meaningful information from Mr. Davies in respect of the projects controlled by the Moving Parties.

40. Since the November 13 Investor Meeting, the Trustee has learned that Mr. Davies has been planning for the Moving Parties to make a filing under the CCAA, while, at the same time:
- (i) withholding the requested information from the Trustee;
  - (ii) promoting false allegations to encourage Investors to be uncooperative with the Trustee; and
  - (iii) communicating with Investors for the attempted purpose of replacing the Trustee and amending the Appointment Order.
41. Attached as **Appendix "F"** is a copy of an email exchange between several Investors and Mr. Davies. Certain parts of the email are highlighted below:
- (i) In response to an Investor enquiring about the existence of third-party mortgages in advance of the SMLs on certain projects, Mr. Davies provides a list of the relevant projects and the nature of the third-party mortgages in priority to the SMLs. The Trustee notes that the information contained in Mr. Davies' response is the exact information requested by the Trustee from Mr. Davies on November 2, 2016, yet Mr. Davies did not provide the Trustee with this information.
  - (ii) Having obtained a copy of A&B's letter to H+H requesting, on behalf of the Trustee, that the Trust Funds be delivered to the Trustee, Mr. Davies forwards the letter to 18 individuals (including Mr. Gottlieb, who is acting on behalf of Mr. Levy and his group of Investors), stating *"If anyone has any remaining doubts about whether Grant Thornton is really trying to take the investors deposit money earmarked for interest payments, see attached."*
42. Attached as **Appendix "G"** is a copy of an email exchange between an advisor who placed Investor funds (who also happens to be an Investor herself) and Mr. Davies in respect of the funds raised on the Boathaus Project. As is seen from the face of the email exchange, Mr. Davies once again raises certain unsubstantiated allegations against the Trustee and its counsel, creating further confusion and anxiety amongst the Investors.

43. As referenced in the First Report, the Trustee has also been advised from its telephone calls with Investors that Mr. Davies has advised that, amongst other things, the Trustee had refused to provide approval for construction financing to some of the Moving Parties which could jeopardize the development of their projects. The Trustee confirmed to these Investors that neither the Moving Parties, nor any of the Developers, had contacted the Trustee to discuss construction financing, other than in respect of the Boathaus Project (which the Trustee had been limited from investigating in any material manner given the absence of information provided by Mr. Davies until very recently).

Impact of the Above Noted Actions on the Proceedings and the Trustee's Response

44. Mr. Davies' and Mr. Lantos' promotion of false and distorted information to the Investors are examples of communications (of which the Trustee is aware) that have caused a significant amount of concern and confusion amongst the Investors. The Trustee has fielded hundreds of telephone calls and emails from Investors enquiring about the allegations noted above. The Trustee's efforts to respond to such allegations have taken considerable time and resulted in additional costs to the estates.
45. The Trustee has serious concerns about the nature of Mr. Davies' correspondence with Investors, as Mr. Davies' financial interests (as controlling mind of the Moving Parties, being 11 of the Developers) are not aligned with the general interests of the Investors.
46. In order to provide an efficient update to Investors which highlights questions previously asked by Investors as well as addresses the allegations against the Trustee and its appointment referenced above, the Trustee created a frequently asked questions document, a copy of which is attached as **Appendix "H"**, and posted the document to the Trustee's website.
47. It has been the Trustee's intention to hold meetings for each of the SMIs; however, given the lengthy delay by Mr. Davies in beginning to provide the requested information for the projects, and given the pending CCAA filing and the scope and ramifications of same, the Trustee does not believe that it would be productive at this time to hold meetings in respect of the projects for which the

Moving Parties are responsible. The Trustee intends to host an investor town hall conference call to address many of the Investors' concerns and provide a general update on the proceedings, where possible.

**CONCLUSION**

48. The Trustee is deeply concerned that the allegations which have been brought to the Trustee's attention have created confusion and anxiety amongst the Investors. The Trustee has and is continuing to work expeditiously to address any inaccuracies that are raised by Investors.
49. The Trustee is also concerned that efforts to amend the Appointment Order or even replace the Trustee are being fueled by Mr. Davies and parties who have placed Investor funds, all of whom are conflicted from impartially promoting the interests of the Investors. Accordingly, the Trustee is concerned that actions may be initiated by stakeholders without sufficient knowledge of the circumstances and the advice that they receive.
50. Such actions have challenged the Trustee's ability to carry out its responsibilities pursuant to the Appointment Order. Notwithstanding this, the Trustee continues to advance the Investors' interests and will continue to do so pursuant to the Appointment Order.

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

27785494.3

# TAB 4



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**

Court File No. CV-16-11625-00CL

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

**IN THE MATTER OF THE COMPANIES' CREDITOR ARRANGMENT ACT, R.S.C.  
1985, C. C-36, AS AMNEDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET)  
INC., TEXTBOOK (ROSS PARK) INC., TEXTBOOK (774 BRONSON AVENUE) INC.,  
1703858 ONTARIO INC., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,  
MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE  
INVESTMENTS (BURLINGTON) LTD., LEGACY LANE INVESTMENTS LTD. and  
SCOLLARD DEVELOPMENT CORPORATION (collectively the "CAA Applicants")**

**THIRD REPORT OF THE TRUSTEE**

**DECEMBER 13, 2016**



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

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Appendix A Appointment Order dated October 27, 2016

Appendix B First Report dated November 10, 2016, without appendices

Appendix C Second Report dated November 28, 2016, without appendices

## INTRODUCTION AND PURPOSE

1. This report (the "**Third 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 "A"** (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 Tier 1 Trustee Corporations, invested funds by way of a syndicated mortgage investment ("**SMI**") with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**") (collectively, the "**Investors**"). 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. Apart from the Marfatia Affidavit, responding affidavits to the Appointment 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**")). The Appointment Order was granted notwithstanding the submissions of these stakeholders and their counsel to the Court.
5. On November 10, 2016, the Trustee filed its first report (the "**First Report**") in the context of a motion to stay certain paragraphs of the Appointment Order (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>

6. On November 28, 2016, the Trustee filed its second report (the **"Second Report"**) which provided the Court and stakeholders with, among 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 is attached without appendices as **Appendix "C"**. Furthermore, the Trustee has been seeking information from the Davies Developers in respect of the use of Investors' funds, which requests remain unanswered.
7. On December 7, 2016, nine of the Davies Developers (and one of Mr. Davies' related companies) (the **"CCAA Applicants"**) sought protection from their creditors under the *Companies' Creditors Arrangement Act* (the **"CCAA Proceedings"**), which application was heard on December 9, 2016 and adjourned to December 14, 2016 to allow for opposing materials to be delivered.
8. The Tier 1 Trustee Corporations hold SMIs totalling approximately \$80 million cumulatively to the nine projects controlled by the CCAA Applicants, consisting of over 1,600 individual investors.
9. The purpose of this Third report is to provide the Court and the stakeholders with the Trustee's preliminary views on the proposed CCAA Proceedings.
10. 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**

11. This Third Report has been prepared solely for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations.

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<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. All references to dollars in this Third Report are in Canadian currency unless otherwise noted.

#### **TRUSTEE'S VIEWS ON PROPOSED CCAA PROCEEDINGS**

13. As described in detail in the First Report and the Second Report, the Trustee has been seeking documentation from the Davies Developers since the Appointment Order to evaluate the status of the projects controlled by the Davies Developers (the "Davies Projects") and provide meaningful reporting to the Investors. To date, the Davies Developers have not provided any meaningful information in which the Trustee can assess the status of the Davies Projects, their development prospects or the value of the developments should they proceed, the existence of purported construction financing on the Davies Projects (with the exception of one project known as 'Boathaus'), nor the use of Investor funds advanced by the Investors to each of the Davies Developers.
14. Based on limited information provided by counsel to the Davies Developers and the proposed monitor in the CCAA Proceedings, KSV Kofman Inc., it appears that for most of the Davies Projects, the Investors will suffer a significant shortfall on their respective SMIs if the underlying mortgages or any prior ranking mortgages are enforced at this point. On the contrary, third party first secured mortgages (other than the Tier 1 mortgages) appear to be well secured. As such, the Tier 1 Trustee Corporations, and thus the Investors, appear to be the fulcrum stakeholders, who will ultimately be the most impacted by the proposed CCAA Proceedings or the actions that may be taken by the first ranking secured mortgagees.
15. As described in the First report and the Second Report, the Trustee has requested an accounting of funds raised in respect of the SMI's and access to the trust ledgers for each of the Davies Projects, which have not been produced as of the date of this Third Report. The Trustee has received hundreds of inquiries from Investors who are concerned about the lack of reporting from the Davies Developers and the status of the SMIs.
16. In order properly evaluate the alternatives available to the Davies Developers, the Trustee requires reporting on each Davies Project and for such reporting to be independently verified by a third party. Absent such information, it is difficult for

the Trustee to adequately report to and make sound recommendations to the Investors in the Davies Projects. In addition, absent the requested accounting from the Davies Developers, the Trustee cannot evaluate the propriety of the Davies Developers' use of Investor 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 Proceedings which provides additional powers to the 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 Proceedings as a means to a restructuring of the CCAA Applicants. However, the proposed CCAA Proceedings 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 Proceedings 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.

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:



---

J. Krieger, CPA, CA, CIRP, LIT  
Senior Vice President



# TAB 5

Court File Number: CV-16-1162-0001

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

CCAA

Re Textbook (535 Princess Street) Inc.

Plaintiff(s)

AND

et al.

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

As time is of the essence, I have chosen to issue my decision in this brief handwritten endorsement which focuses on the critical issue raised in opposition to the Application.

This is an application for an initial order under <sup>the</sup> CCAA.

<sup>the</sup> Applicants are single purpose real estate developers. The projects involve housing for students and the like. The applicants have no employees. They have no ongoing or active business.

December 15, 2016

Date

Perry J.

Judge's Signature

Additional Pages 13

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

Although, in some cases, substantial preparatory costs (zoning, planning ~~at~~ and the like) beyond the acquisition value of the land have been incurred, none of the applicants have projects that are actually under construction. There are nine properties in all.

In October, the Superintendent of Financial Institutions became concerned with the manner in which funds for these projects ~~was~~ <sup>was</sup> being raised and administered.

About 1600 "investors" advanced various sums (minimum \$25,000) to finance the land acquisition and soft costs.

In respect of the six properties which represent ~~the~~ <sup>the</sup> focal point of this application (because it is vigorously opposed by first mortgages) the syndicate mortgage investors have

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

advanced about \$65 M.

~~\_\_\_\_\_~~

The Superintendent took the view that the so called Trustee Corporation, holding and administering the SMI funds, were unlicensed mortgage brokers such that their activities were illegal. They were also in conflict of interest. A Trustee of these companies (one for each project) was appointed by order of Newbould J. on October 27, 2016.

A number of the Developer Corporation (applicant) in this Application sought a stay of the Newbould J. order. That motion was dismissed on November 14, 2016 by the Div. Ct.

The Applicants, supported by the Trustee, seek an initial order under the CCAA. They seek time, and a first charge over financing necessary, to

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsement Continued

conduct an analysis of the nine projects to determine what the best course of action is - sell, develop, or something else.

It should be noted that the mandate of the Trustee is the protection of the 1600 SMIs who have in excess of \$65M invested in these projects.

Given the history of this matter and questions raised about the bona fides of the developers, John Davis and others, the proposed initial order would grant extraordinary powers to the Monitor. The Applicants and their officers and directors would simply provide information and their expenses to date to the Monitor. The Monitor would effectively run everything.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

As noted, six of the Applicants granted first mortgages over the land in their project. In all cases, the SMLs are in second position.

Vectra Financial has a \$5.7 M first mortgage.

2377358 Ontario has a \$3.5 M first mortgage

2174217 Ontario has three first mortgages of about \$3.5 M in total

First Capital has a \$2.35 M first mortgage.

While the First Mortgages have many complaints about the Application, their critical issue is with the super-priority charges that are sought.

The Applicants seek an Administration Charge of \$500,000 to secure the fees of the Monitor and its counsel,

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

as well as The Trustee and its counsel.

The Applicants seek a Directors Charge of \$100,000 to protect Mr. Davies, and others.

The Applicants seek a DIP Lenders Charge up to a maximum of \$6.75M (The forecast initial advances are about \$1.4 M for the first 30 days).

All of these charges would "prime" the First Mortgages loans.

The Applicants also seek a stay. At least one of the mortgages ~~is~~ is in default, having come to maturity in October 2016. It has not been, nor is it contemplated in the foreseeable future that it will be, paid or assumed by

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

Judges Endorsment Continued

The DIP Lender.

First Capital's mortgage it is contemplated will be taken out by The DIP Lender.

The DIP Lender is prepared to take out this particular mortgage because there is a reasonable prospect that it will be able to re finance promptly with construction financing due to the particular stage of development of the property involved with The First Capital mortgage.

None of the other projects are in a like position. There is no prospect of immediate re financing for any of the other projects.

Most of the DIP funds will be used to conduct the analysis of the projects to see how best to maximize



Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

value for the SMLs. It is common ground that the DIP funding offers no real benefit to the First Mortgagees at all.

The First Mortgagees argue that they ought not to be forced to bear the risk that there will be a shortfall due to the accumulation of the requested charges. That is not what they bargained for. To the contrary, they advanced funds on the strength of their primary secured position.

The First Mortgagees therefore argue that they will be "paying" for the professional analysis meant only to benefit the SMLs, in the end.

The Applicants and Trustee argue that the First Mortgagees are well secured. Under no circumstances, they say, will the First Mortgagees be prejudiced.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

The factors to be considered in whether to grant super priority charges vary to some extent with the particular charge in issue.

S. 11.2(4) of the CCAA, for example, sets out a number of factors to be considered in respect of DIP financing and whether to grant a super priority.

The period of time during which the debtor company will be subject to proceedings, whether the company's management has the confidence of the major creditors, the nature and value of the company's property and whether any creditor would be materially prejudiced are all relevant considerations.

~~with the result that the~~

~~company's assets are not~~

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

~~\_\_\_\_\_~~

I am not prepared to authorize a  
super priority for the sought after  
charges, including the DIP lender.

The initial investigation, analysis and  
report on the various projects to the  
court ( hoped to take place by mid-February )  
is only the beginning. Assuming some  
of the projects, or all of them, are to  
be pursued in hopes of increasing  
realization (eventually) for the SMEs, there  
will still have to be more time to bring  
the projects to a construction-ready  
state and try to find, negotiate and  
close construction finance loans.

The First Mortgages would, in these  
circumstances be held hostage on  
the current model, until such time

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

Judges Endorsment Continued

as take out financing can be found.

There is good reason to be suspicious of the appraisals brought forward by Mr. Davies. They are heavily qualified.

There can be, because they were filed at the 11th hour, no opportunity to respond or cross examine on them.

~~The~~ The Trustee's Second Report of November 28, 2016, recounts the Superintendent's concern "that the appraisal value provided to the investors did not reflect the value of the real property, such that the true values may be inadequate to cover the respective SMLs." That paragraphally appears to ~~be~~ have been proven true.

That report also makes address serious criticism of Mr. Davies and his inclinations and forthrightness in

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

Judges Endorsment Continued

The production of information.

I do not think the appraisal evidence is an adequate answer to the First Mortgagee's concerns.

If there is no question that adequate value is there, the DIP Lender, Monitor, Directors and Trustee would presumably not be insisting on a Superpriority charge.

For an exercise that is quite explicitly designed to benefit only the SMIs (for whom I have great sympathy), it is, in my view, unreasonable to expect the First Mortgagee to take all the risk.

If the SMIs were being granted by the Charges, that would make sense because they are the ones benefitting. The DIP Lender, apparently, will not advance funds on that basis, however.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

Judges Endorsment Continued

Although I have misgivings about whether protection under the CCAA is the appropriate avenue in this case (see Cliff over Myle 2009 BCCA 327, Romgen Investment 2014 ONSC 2781), had the Applicants been able to propose a means of financing the next steps without impairing the security of the First Mortgages (and honouring maturities and monthly servicing costs) I might have been inclined to entertain the proposal.

In the circumstances, however, the application for a super priority charge for Administration Costs, Directors' indemnity costs and DIP Lending is dismissed.

Given the critical nature of the DIP financing and the charges sought to the application for an initial order, the application as structured is dismissed.



Endorsement of the Honourable Justice Penny

CCAA

Re Textbook (525 Princess Street) Inc. et al.

As time is of the essence I have chosen to issue my decision in this brief handwritten Endorsement which focuses on the critical issues raised in opposition to the Application. This is an application for an initial order under the CCAA. The Applicants are single purpose real estate developers. The projects involve housing for students and the disabled. The Applicants have no employees. They have no ongoing or active business. Although, in some cases, substantial preparatory costs (zoning, planning and the like) beyond the acquisition value of the land have been incurred, none of the Applicants actually have projects that are under construction. There are nine projects in all.

In October, the Superintendent of Financial Institutions became concerned with the manner in which the funds for these projects was being raised and administered. About 1600 "investors" advanced various sums (minimum \$25,000) to finance the land acquisition and soft costs. In respect of the six properties which represent the focal point of this application (because it is vigorously opposed by first mortgagees) the syndicate mortgage investors (SMIs) have advanced about \$65M.

The Superintendent took the view that the so called Trustee Corporations holding and administering the SMI funds were unlicensed mortgage brokers such that their activities were illegal. They were also in a conflict of interest. A Trustee of these companies (one for each project) was appointed by order of Newbould J. on October 27, 2016.

A number of the Development Corporations (applicants in this Application) sought a stay of the Newbould J. Order. That motion was dismissed on November 14, 2016 by the Divisional Court.

The Applicants supported by the Trustee seek an initial order under the CCAA. They seek time and a first charge over financing necessary, to conduct an analysis of the nine projects to determine what the best course of action is – sell, develop or something else.

It should be noted that the mandate of the Trustee is the protection of the 1600 SMIs who have in excess of \$65M invested in these projects.

Given the history of this matter and questions raised about the bona fides of the developers, John Davies and others, the proposed initial order would grant extraordinary powers to the Monitor. The Applicants and their officers and directors would simply provide information and their experience to date to the Monitor. The Monitor effectively would run everything.

As noted, six of the Applicants granted first mortgages over the land in their project. In all cases, the SMIs are in second position. Vector Financial has a \$5.7M first mortgage. 2377358 Ontario Inc. has a \$3.5M first mortgage. 2174217 Ontario Inc. has three first mortgages of about \$3.5M in total. First Capital has a \$2.35M first mortgage.

While the First Mortgagees have many complaints about the Application, their critical issue is with the super priority charges that are sought.



The Applicants seek an Administration Charge of \$500,000 to secure the fees of the Monitor and its counsel, as well as the Trustee and its counsel.

The Applicants seek a Direction Charge of \$100,000 to protect Mr. Davies and others.

The Applicants seek a DIP Lenders Charge up to a maximum of \$6.75M (the forecast initial advances are about \$1.4M for the first 30 days).

All of these charges would “prime” the First Mortgagees loans.

The Applicants also seek a stay. At least once of the Mortgages is in default having come to maturity in October 2016. It has not been, or is it contemplated in the foreseeable future that it will be paid or assumed by the DIP Lender.

First Capital’s mortgage, it is contemplated, will be taken out by the DIP Lender. The DIP Lender is prepared to take out this particular mortgage because there is a reasonable prospect that it will be able to refinance promptly with construction financing due to the particular stage of the development of the project involved with First Capital Mortgage. None of the other projects are in a like position. There is no prospect of immediate refinancing for any of the other projects.

Most of the DIP funding will be used to conduct the analysis of the projects to see how best to maximize value for the SMIs. It is common ground that the DIP funding offers no real benefit to the First Mortgagees at all.

The First Mortgagees argue that they ought not to be forced to bear the risk that there will be a shortfall due to the accumulation of the requested charges. That is not what they bargained for. To the contrary, they advanced funds on the strength of their primary secured position. The First Mortgagees therefore argue that they will be “paying” for the professional analysis meant only to benefit the SMIs, in the end.

The Applicants and Trustee argue that the First Mortgagees are well secured. Under no circumstances, they say, will the First Mortgagees be prejudiced.

The factors to be considered in whether to grant super priority charges vary to some extent with the particular charge in issue. S.11.2(4) of the CCAA for example, sets out a number of factors to be considered in respect of DIP financing and whether to grant a super priority.

The period of time during which the debtor company will be subject to proceedings, whether the company’s management has the confidence of the major creditors, the nature and value of the company’s property and whether any creditor would be materially prejudiced are all relevant considerations.

I am not prepared to authorize a super priority for the sought after Charges, including the DIP Lender.

The initial investigation, analysis and report on the various projects to the court (hoped to take place by mid-February) is only the beginning. Assuming some of the projects or all of them are to be pursued in hopes of increasing realizations (eventually) for the SMIs, there will still have to

be more time to bring the projects to a construction ready state and try to find, negotiate and close construction financing loans. The First Mortgagees would, in these circumstances, be held hostage , on the current model until such time as take out financing can be found.

There is good reason to be suspicious of the appraisals brought forth by Mr. Davies. They are heavily qualified. There has been, because they were filed at the 11<sup>th</sup> hour, no opportunity to respond or cross examine on them. The Trustee's Second Report of November 28, 2016 recounts the Superintendent's concern "that the appraisal value provided to the investors did not reflect the value of the real property, such that the true values may be inadequate to cover the respective SMIs". That parenthetically appears to have been proven true.

That report also makes adverse, serious criticism of Mr. Davies and his timeliness and forthrightness in the production of information. I do not think the appraisal evidence is an adequate answer to the First Mortgagee's concerns. If there is no question that adequate value is there, the DIP Lender, Monitors, Directors and Trustee would presumably not be insisting on a super priority charge.

For an exercise that is quite explicitly designed to benefit only the SMIs (for whom I have great sympathy), it is, in my view, unreasonable to expect the First Mortgagees to take all the risk.

If the SMIs were being primed by the other Charges, that would make sense because they are the ones benefitting. The DIP Lender apparently, will not advance funds on that basis, however.

Although I have misgivings about whether protection under the CCAA is the appropriate avenue in this case (see Cliffs over Maple 2008 BCCA 327; Romsqen Investment – 2014 ONSC 2781), had the Applicants been able to propose a means of financing the next steps without impairing the security of the First Mortgagees (and honouring maturities and monthly servicing costs), I might have been inclined to sustain the proposal.

In the circumstances, however, the application for a super priority charge for Administration Costs, Directors indemnity costs and DIP Lending is dismissed.

Given the critical nature of the DIP financing and the charges sought to the application for an initial order, the application as structured is dismissed.

MAP

# TAB 6

**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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- Appendix 2 First Report dated November 10, 2016
- Appendix 3 Second Report dated November 28, 2016
- Appendix 4 Third Report dated December 13, 2016
- Appendix 5 Endorsement of the Honourable Justice Penny dated December 15, 2016 and unofficial typed version
- Appendix 6 Notice of Sale (Boathaus) from Firm Capital dated December 16, 2016
- Appendix 7 Notices of Sale re the Kitchener Property and the McMurray Property
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- Appendix 19 Demand by the Trustee (and section 244 notice) dated January 17, 2017
- Appendix 20 Consent of KSV Kofman Inc.

**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.

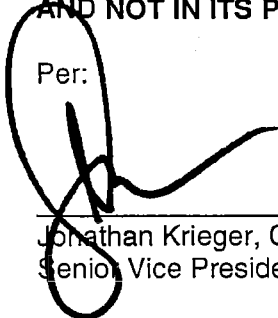
**CONCLUSION AND RECOMMENDED RELIEF**

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:



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





**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**

**SUPPLEMENT TO THE FOURTH REPORT OF THE TRUSTEE**

**JANUARY 26, 2017**



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

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- Appendix 1 Email from the Trustee's counsel to Firm Capital's counsel dated January 24, 2017
- Appendix 2 Commitment Letter
- Appendix 3 Registrations made in favour of Trisura on November 13, 2015

**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**

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2006, c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c.  
C.43**

**SUPPLEMENT TO THE FOURTH REPORT OF THE TRUSTEE**

**JANUARY 26, 2017**

**INTRODUCTION**

1. This supplement (this "**Fourth Report Supplement**") 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**"). This Fourth Report Supplement is filed by the Trustee as a supplement to its fourth report dated January 20, 2017 (the "**Fourth Report**").

2. Unless otherwise defined, all capitalized terms in this Fourth Report Supplement are defined as they are in the Fourth Report. Any and all disclaimers provided in the Fourth Report also apply to this Fourth Report Supplement.
3. Background information in respect of GTL's Appointment as the Trustee and the evolution of these proceedings is provided in the Fourth Report and the Previous Reports (which were appended, with appendices, to the Fourth Report).
4. 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).

#### **PURPOSE OF THIS FOURTH REPORT SUPPLEMENT**

5. The purpose of this Fourth Report Supplement is to provide the Court with updated information to support the relief requested by the Trustee in the Fourth Report and to correct one fact in the Fourth Report.

#### **FUNDING OF THE PROPOSED BOATHAUS PROCEEDINGS**

6. Paragraph 50 of the Fourth Report provides that "*[t]he Trustee expects KSV, in its capacity as the [proposed] 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.*"
7. On January 24, 2017, the Trustee's counsel wrote to Firm Capital's counsel, a copy of which correspondence is attached as **Appendix "1"**, advising, amongst other things, that:
  - (i) the Trustee expected KSV, in its above-mentioned capacity, to receive a binding commitment letter in the next 24 hours, which would take-out the Firm Capital Boathaus Mortgage in its entirety;
  - (ii) to the extent that such commitment is not received by the January 31 hearing date, the trustee intended to adjourn the hearing until such time as a binding commitment letter is provided; and

(iii) in light of the above, to the extent that Firm Capital takes steps and/or prepares materials to oppose the proposed Boathaus Proceedings, the Trustee would be taking the position that the costs for doing so ought not to be added to the Firm Capital Boathaus Mortgage.

8. On January 25, 2017, as anticipated, KSV, in its capacity as the proposed receiver and manager of the Boathaus Property, received the executed binding commitment letter attached as **Appendix "2"** (the "**Commitment Letter**"). Two other signed commitment letters were also received, but the Commitment Letter provided the most favourable terms.
9. On January 26, 2017, the Trustee understands that the funds referenced in the Commitment Letter were deposited into the trust account of Bennett Jones LLP, legal counsel for KSV in its capacity as the proposed receiver and manager of the Boathaus Property.

**CORRECTION**

10. Paragraph 30(iv) of the Fourth Report provides that the quantum of the Trisura Boathaus Charge is \$3.5 million. While the Trisura Boathaus Charge was originally registered for this amount on June 30, 2015, it was subsequently increased to \$11 million by way of a registration made on title on November 13, 2015 (and a postponement of the Boathaus SMI to the increased Trisura Boathaus Charge was then immediately registered on title), as reflected by the registrations attached as **Appendix "3"**.

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**

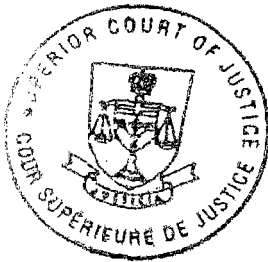
Per: 

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

# TAB 7

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

THE HONOURABLE ) THURSDAY, THE 2ND  
MR. JUSTICE WILTON-SIEGEL ) DAY OF FEBRUARY, 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 January 31, 2017, February 1, 2017 and this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fourth Report of the Trustee dated January 20, 2017 and the appendices thereto (the "**Fourth Report**"), including, without limitation, the consent of KSV dated January 19, 2017 to act as the Receiver, the Supplement to the Fourth Report dated January 26, 2017 and the appendices thereto (the "**Fourth Report Supplement**") and the Report of the proposed Receiver dated January 30, 2017, 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 affidavits of service of Eunice Baltkois sworn January 20, 2017 and January 26, 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) subject to paragraphs 33 and 34 of this Order, 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, subject to paragraph 10 of this Order, 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, subject to paragraph 10 of this Order, 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.

10. **THIS COURT ORDERS** that nothing in this Order shall prevent Trisura Guarantee Insurance Company ("**Trisura**") from commencing one or more Proceeding(s) against the Debtor and Trisura's other indemnitors (excluding the Debtor, the "**Indemnitors**") where the commencement of such Proceeding(s) against the Debtor is required in order to name the Indemnitors in such Proceeding(s), provided, however, that neither Trisura nor any of the Indemnitors shall be permitted to continue such Proceeding(s) against the Debtor or the Receiver.

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the 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**

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 (except deposits from purchasers in respect of sales of condominium units, which shall be delivered to Chaitons LLP to be held and form part of the Deposits (as defined in paragraph 34 of this Order)), including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the 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**

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**

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



pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on all the Property except the Deposits (as defined herein), 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 all the Property except the Deposits in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

## FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,500,000 (or such greater amount as this Court may by further Order authorize) (the "**Authorized Sum**") 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 except for the Deposits 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, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and any special priority lien under section 78 of the *Construction Lien Act* in favour of Leeswood Design Build Ltd. (not to exceed \$58,000) that may be determined to exist by the Receiver (the "**Lien**"). If the Lien is determined to exist by the Receiver, the Receiver shall discharge the Lien from the proceeds (not to exceed \$58,000) generated from the Property.

22. **THIS COURT ORDERS** that, without in any way limiting the generality of paragraph 21 of this Order, the Receiver be at liberty and is hereby empowered to borrow the Authorized Sum by way of the Commitment Letter (as defined in the Fourth Report Supplement) (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. ("**Firm Capital**"), which Identified Borrowings shall benefit from the Receiver's Borrowings Charge on the same terms and conditions as provided in paragraph 21 of this Order, and which Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

23. **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.

24. **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.

25. **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 from the lender named in the Commitment Letter and any and all Receiver's Certificates evidencing the same or any part thereof shall, up to a principal amount of \$3,500,000, rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates, and any additional 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 but immediately subordinate to the borrowings in favour of the lender named in the Commitment Letter, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

26. **THIS COURT ORDERS** that all amounts owing under and secured by the Firm Capital Boathaus Mortgage (as defined in the Fourth Report) in favour of Firm Capital shall be repaid in full by the Receiver within two (2) business days of the date of this Order from the proceeds of the Identified Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of Firm Capital in respect of the Firm Capital Boathaus Mortgage in the interim period from the making of this Order to the time such mortgage has been repaid in full (the "**Interim Period**"), provided, however, that Firm Capital shall not enforce any of its rights or remedies during the Interim Period in respect of the Firm Capital Boathaus Mortgage without the consent of the Receiver or approval of this Court.

#### **SERVICE AND NOTICE**

27. **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>.

28. **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**

29. **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 30 of this Order and proceed separately from the proceedings in respect of STC, the Trustee and the assets, properties and undertakings of STC.

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

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

*NTW-f*

**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**

31. **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.

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

33. **THIS COURT ORDERS** that nothing in this Order or the BIA shall now or in the future grant to the Receiver, or be deemed to grant to the Receiver, or create in favour of any Person (including, without limitation, any potential future purchaser of the Property or the Debtor (the "**Future Purchaser**")), any right, title, entitlement, benefit or interest in or to Tarion Bond Nos. TDS0990169 or TDS0990142 issued, respectively, by Everest Insurance Company of Canada ("**Everest**") and Trisura (collectively, the "**Tarion Bonds**"). For greater certainty, neither the Receiver nor any Future Purchaser shall in any way be entitled to the benefit of or rely on the Tarion Bonds for any purpose whatsoever.

34. **THIS COURT ORDERS** that no Future Purchaser of the Property or Debtor shall, without making arrangements to extinguish any liability that Trisura and Everest may have in respect of the Tarion Bonds, be entitled to any right, title, entitlement, benefit or interest, in or to the Property, the Debtor or any pre-sale deposits held in trust by Chaitons LLP and paid by purchasers of the condominium units in respect of pre-sales at the Real Property related to the Tarion Bonds (the "**Deposits**").

35. **THIS COURT ORDERS AND DIRECTS** that Trisura shall be paid, in full, for any and all losses, damages, liabilities, costs and expenses owed to it by the Debtor or to any other Indemnitor pursuant to the Tarion Bonds or Indemnity Agreements defined below from any proceeds of sale resulting from any Transaction (as defined below) in respect of the Property.

36. **THIS COURT ORDERS** that the Receiver is precluded from consummating any Transaction (as defined below) that does not:

- (a) fully and finally discharge Trisura and Everest from any and all liability related to the Tarion Bonds; and
- (b) fully indemnify Trisura under the Indemnity Agreements dated October 19, 2015 and May 11, 2015 (the "**Indemnity Agreements**").

The term "**Transaction**" means any arrangement that provides for the sale of, development of or investment in all or part of the Property.

37. **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.

38. **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.

39. **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.

40. **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.

W. J. P. - J. J.

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

FEB 02 2017

PER / PAR: *W*

**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 2nd day of February 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 reasonable and documented fees.

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 except for the Deposits (as defined in the Order), 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  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

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



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE

THURSDAY, THE 2<sup>ND</sup>

MR. JUSTICE WILTON-SIEGEL

DAY OF FEBRUARY, 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)

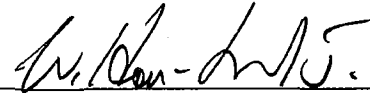
**THIS MOTION**, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of each of the Respondents, for an Order, *inter alia*, approving the First Report of the Trustee dated November 10, 2016 (the “First

**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**”), the Supplement to the Fourth Report of the Trustee dated January 26, 2017 (the “**Fourth Report Supplement**”) and the activities of the Trustee set out in each of the First Report, the Second Report, the Third Report, the Fourth Report and the Fourth Report Supplement, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report, the Second Report, the Third Report, the Fourth Report and the Fourth Report Supplement, 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 affidavits of service of Eunice Baltkois sworn January 20, 2017 and January 26, 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.
6. **THIS COURT ORDERS** that the Fourth Report Supplement and the activities of the Trustee described therein be and are hereby approved.
7. **THIS COURT ORDERS** that this Court’s approval of the First Report, the Second Report, the Third Report, the Fourth Report and the Fourth Report Supplement is not deemed to

be a finding of fact or proof of any allegations or claims relating to the actions or omissions of Mr. Raj Singh or Tier 1 Transaction Advisory Services Inc..

A handwritten signature in black ink, appearing to read 'W. Khan - T.A.S.', written above a horizontal line.

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

FEB 02 2017

PER / PAR: A handwritten signature in black ink, appearing to be a stylized 'a' or similar character.



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*



Jan 31, 2017

Applicant

Respondents

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

Feb 21 7

- J. Nemers for Trustee
- D. Ullmann for Deming Street Financial Inc.
- S. Ferguson for Toronto Guarantee Insurance Company
- J. Bell for KSV, the proposed Receiver
- Gr. Benchechrit for Tier 1 Investors

All parties on the service list have been served with notice of the meeting's attendance. Counsel advise that pursuant Design Build Ltd. and Toronto consent to the relief sought. Counsel also advise that Feron Capital consents to the order. The debtor was represented in chambers yesterday to seek an adjournment to answer a pending offer, which request was denied. The debtor, while aware of the terms of the order sought generally, does not appear this morning.

I am satisfied that it is just and convenient to appoint a receiver under section 243(1) of the Bankruptcy and Insolvency Act to protect the interests of the Tier 1 Investors who are the likely holders of the equity in the lands at issue. The form of order addresses the concerns of Toronto, the proposed and Feron Capital

PTD

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceedings commenced at Toronto

MOTION RECORD  
(returnable January 31, 2017)  
Volume 1 of 2

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Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of the Tier 1 Trustee Corporations



as prior ranking secured parties, as evidenced by their  
consent to the order, I will remain seized of this  
~~the~~ receivership proceeding.

Trusts go on the form attached appointing the  
receiver and approving the Trustee's  
reports in the notes record and W. Corbett J.  
the supplement to the Trustee's  
fourth report.



**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**

---

**UNOFFICIAL TRANSCRIPTION OF THE ENDORSEMENT OF  
THE HONOURABLE JUSTICE WILTON-SIEGEL  
DATED FEBRUARY 2, 2017**

---

February 2, 2017

J. Nemers for Trustee  
D. Ullmann for Downing Street Financial Inc.  
S. Ingram for Trisura Guarantee Insurance Company  
J. Bell for KSV, the proposed Receiver  
G. Benchetrit for Tier 1 Investors

All parties on the service list have been served with notice of this morning's attendance. Counsel advise that Leeswood Design Build Ltd. and Trisura consent to the relief sought. Counsel also advises that Firm Capital consents to the order. The debtor was represented in chambers yesterday to seek an adjournment to assess a pending offer, which request was denied. The debtor, while aware of the form of the order sought generally, does not appear this morning.

I am satisfied that it is just and convenient to appoint a receiver under section 243(1) of the Bankruptcy and Insolvency Act to protect the interests of the Tier 1 Investors who are the likely holders of the equity in the lands at issue. The form of order addresses the concerns of Trisura, Leeswood and Firm Capital as prior ranking secured parties, as evidenced by their consent to the order. I will remain seized of this receivership proceeding.

Orders to go in the form attached appointing the receiver and approving the Trustee's reports in the motion record and the supplement to the Trustee's fourth report.

Wilton-Siegel, J.

# TAB 8



Court File No. CV-16-11625-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEXTBOOK (525 PRINCESS  
STREET) INC., TEXTBOOK (555 PRINCESS STREET)  
INC., TEXTBOOK (ROSS PARK) INC., TEXTBOOK (774  
BRONSON AVENUE) INC., 1703858 ONTARIO INC.,  
MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,  
MEMORY CARE INVESTMENTS (KITCHENER) LTD.,  
MEMORY CARE INVESTMENTS (BURLINGTON) LTD.,  
LEGACY LANE INVESTMENTS LTD. and SCOLLARD  
DEVELOPMENT CORPORATION (collectively the  
"Applicants")

AFFIDAVIT OF JOHN DAVIES  
(sworn December 6<sup>th</sup>, 2016)

I, John Davies, of King City, in the Province of Ontario, MAKE OATH AND SAY AS  
FOLLOWS:

1. I am the sole officer and director of the Applicants, Memory Care Investments (Oakville) Ltd. ("**MC Oakville**"), Memory Care Investments (Kitchener) Ltd. ("**MC Kitchener**"), Memory Care Investments (Burlington) Ltd. ("**MC Burlington**"), 1703858 Ontario Inc. ("**1703858**"), Legacy Lane Investments Ltd. ("**Legacy Lane**") and Scollard Development Corporation ("**Scollard Development**").

2. Walter Thompson ("**Thompson**") and I are the sole officers and directors of the Applicants, Textbook (525 Princess Street) Inc. ("**Textbook 525**"), Textbook (555 Princess Street) Inc. ("**Textbook 555**"), Textbook (774 Bronson Avenue) Inc. ("**Textbook 774**") and Textbook (Ross Park) Inc. ("**Textbook Ross Park**"), and Thompson and I are officers and

directors of Textbook (445 Princess Street) Inc. (“**Textbook 445**”) and McMurray Street Investments Inc. (“**McMurray Street**”). As such, I have personal knowledge of the matters to which I depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source of that information and I verily believe the information to be true.

3. At this time, we are not seeking protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for Textbook 445 or McMurray Street, both of which are borrowers of funds from the Bare Trustees over which the FSCO Trustee has been appointed (both terms as defined below). Circumstances may require one or both of those companies to seek CCAA protection in the future and, as a result, and for completeness, we have left references to Textbook 445 and McMurray Street and their projects, assets and liabilities in this Affidavit.

4. The Applicants are developers of student residences, accommodations for those suffering from various forms of cognitive impairment and low-rise condominiums. With the exception of one project, all of the Applicants’ projects are presently in the pre-construction phase. In a number of instances, the Applicants are ready to proceed with construction in the near term and the necessary construction financing has been sourced, however, a number of the remaining projects are not sufficiently advanced to allow for construction to commence.

5. Unfortunately, the Applicants currently face a liquidity crisis that threatens the ongoing viability of their projects. Over the course of the last few months preceding the Applicants’ application, Thompson and I had been working diligently to source interim financing, including by way of equity raises in respect of certain of the Applicants, to complete the pre-construction work that needs to be done on the Applicants’ projects and to provide the Applicants with sufficient liquidity to continue operations, including servicing the Applicants’ debt to their syndicated mortgage investors (the “**Investors**”) who provided funding for the soft costs (and in some cases land acquisition costs) related to the development of the projects.

6. I swear this affidavit in support of an application by the Applicants for an initial order

(the “**Initial Order**”) pursuant to the CCAA and believe that the CCAA will provide the Applicants with the funding necessary to address their liquidity issues and the stability to effect a balance sheet restructuring and, most importantly, to provide the Investors with the necessary information to allow them to make an informed decision, on a project-by-project basis, as to whether they wish to see some or all of the projects either through to completion or sold as part of a court-supervised process.

7. The Applicants firmly believe that as part of a transparent and collaborative process, all options available to maximize value for the Investors should be considered, including the sale of all of the projects if the Investors determine that to be in their financial best interests. The Applicants require a stable environment within which they, in consultation with their Investors and the Monitor (as defined herein), can evaluate the status of each of their projects and to effect a balance sheet restructuring.

8. Having consulted with a large number of Investors, I believe a CCAA proceeding in respect of the Applicants, overseen and substantially conducted by a CCAA Monitor as an officer of the court, will provide the Applicants and the Investors with the best opportunity to explore all available restructuring and value-maximizing alternatives as described in greater detail below.

9. I have consulted at length with Thompson and, as the directors and officers charged with responsibility for the day-to-day operations of the Applicants’ business, we are of the view that KSV Kofman Inc. (“**KSV**”) should be appointed as Monitor of the Applicants under the Initial Order with enhanced powers that would enable and authorize the Monitor to make all material decisions in respect of the Applicants’ businesses, including immediately embarking on a process for the evaluation of all of the Applicants’ projects, in consultation with the Investors, in place of the board of directors and management of the Applicants.

10. Given our institutional knowledge of the Applicants and the projects, Thompson and I will remain available to the Monitor throughout these proceedings as information resources, however, we have agreed to restrict our roles in an effort to promote transparency and strengthen

Investor confidence in the CCAA proceedings and we will have no decision making power with to the Applicants' business or any transactions or plans ultimately brought by the Monitor before the Court for approval. We are confident that, upon the Monitors' request, we can provide significant value to these restructuring proceedings and to the Investors in particular. Our accumulated knowledge about each project and our existing working relationships with many of the professionals, consultants and government departments dealing with the development of the projects will greatly facilitate, expedite and materially improve the results of the Monitors' efforts in that regard.

11. All references to currency in this affidavit are references to Canadian Dollars, unless otherwise indicated.

## **I. RELIEF SOUGHT**

12. The Applicants seek an Initial Order under the CCAA, among other things, (i) granting the Initial Order in respect of the Applicants in the form included at Tab 3 of the Applicants' application record); (ii) appointing KSV Kofman Inc. ("**KSV**") as monitor under the CCAA proceedings with "enhanced" powers as set out in the Initial Order (the "**Monitor**"); (iii) approving a debtor in possession ("**DIP**") credit facility in an amount up to a maximum of \$6.75 million, as described in greater detail below; (iv) granting an Administration Charge, Directors' Charge and DIP Lender's Charge over the Property (as such terms are defined in the Initial Order) of the Applicants in the priority set out in the Initial Order and as described below; and (v) a 30 day stay of proceedings.

## **II. INTRODUCTION**

### *a. Textbook Suites Inc.*

13. Thompson and I have been involved in property acquisition and project development and design in Canada and the United States for well over 30 years. In 1997, we were officers in GenerX Inc. and later The GenerX Corporation, the predecessor corporation to Textbook Student

Suites Inc. (“TSSI”) and Textbook Suites Inc. (“Textbook Suites”) which we co-founded in 2015.

14. Thompson and I are officers and directors of TSSI as well as Textbook Suites.

15. The shares in both TSSI and Textbook Suites are divided into Class A and Class B shares. The shareholders in TSSI and the corresponding percentage of their shareholdings are as follows: (i) Class A shares - 1321805 Ontario Inc. (“1321805”) (50%), Aeolian Investments Ltd. (“Aeolian”) (17%), Dachstein Holdings Inc. (“Dachstein”) (16%) and RS Consulting Group Inc. (“RSCG”) (17%); and (ii) Class B shares – 1321805 (30%), Aeolian (30%), Dachstein (30%) and RSCG (10%).

16. The shareholders in Textbook Suites and the corresponding percentage of their shareholdings are as follow: (i) Class A shares – 1321805 (50%), Aeolian (17%), Dachstein (16%) and RSCG (17%); and (ii) Class B Shares – 1321805 (35%), Aeolian (35%), Dachstein (20%) and RSCG (10%).

17. I am advised by Walter Thompson that 1321805 holds its equity interests in TSSI and Textbook Suites on behalf of a trust, of which he, among others, is a beneficiary while Aeolian holds the equity interests belonging to my wife and children who are Aeolian’s only shareholders. The equity interests held by Dachstein in TSSI and Textbook Suites are held on behalf of Harris family members (as described in greater detail below) and RSCG holds the equity interests of Bhaktraj Singh also referred to as Raj Singh (“Singh”).

18. TSSI and Textbook Suites, along with RSCG, are the sole shareholders in each of Textbook 445, Textbook 525, Textbook 555, Textbook 774 and Textbook Ross Park. Attached hereto and marked as Exhibit “A” is an organizational chart for TSSI, Textbook Suites and the relevant subsidiary Applicants.

19. TSSI and Textbook Suites are engaged in the acquisition, design, planning and construction of purpose built, high rise student residences. Most universities have sufficient on-

campus accommodations and beds for first year students only, but thereafter students are expected to find their own lodging. Most often, these accommodations are rooms within intensively subdivided single family homes in stable single family neighbourhoods. These buildings do not typically meet any modern life/safety standards and receive little or no maintenance by their owners. Student rooming houses rarely meet zoning and fire code provisions and are often owned by absentee landlords who spend little or no money on maintaining these buildings.

20. The interface of overcrowded and unsafe dwellings into surrounding neighbourhoods often leads to interpersonal conflicts, erosion of property values and neighbourhood destabilization. The imposition of 6, 7 or 8 students into a single family home in a single family neighbourhood creates immeasurable problems for municipalities which problems are more often than not neglected, giving rise to greater problems for the neighbourhood as a whole. TSSI and Textbook Suites were founded to fill the void and satisfy the growing demand for quality student accommodations in markets across Canada through the construction of fully supervised, secure, safe, modern and fully furnished residential accommodations.

21. Further in that regard, TSSI and Textbook Suites' development projects have been well received by most university and college campus housing administrators, who appreciate that their students will now have affordable and safe housing options after they complete their first year of studies and move out of their on-campus residences.

22. TSSI and Textbook Suites' mandate is to source property in close proximity to university and college campuses and construct modern, fully equipped, safe and secure fully furnished suites for rents modestly higher than the substandard accommodations otherwise available to students. The sites chosen by TSSI and Textbook Suites for development as student residences are well located in close proximity to university campuses and come complete with a wide range of amenity options and suite types including bachelors and 1 and 2 bedroom units. The suites are complimented by generous common areas containing lounges, study rooms for larger groups, fitness facilities, concierge services and convenience retail or coffee shops.

23. Some projects will be constructed as condominium buildings with units for sale to investors and managed by third party property managers while other projects will be built for long term ownership by TSSI and Textbook Suites' shareholders and their partners.

24. Once suitable properties have been found, TSSI and Textbook Suites use single purpose project specific corporations such as certain of the Applicants - Textbook 525, Textbook 555, Textbook 774 and Textbook Ross Park - to engage in the development, construction and sale of units in the developments.

25. TSSI and Textbook Suites presently have five projects in pre-development, all of which are located in the Province of Ontario. Three of those projects are within walking distance of Queen's University in the City of Kingston. One project is located in close proximity to the campus of Carleton University in the City of Ottawa. The final project is located a short walking distance from Western University in the City of London.

*b. Memory Care Investments Ltd.*

26. I founded Memory Care Investments Ltd. ("MCIL") in 2013 to meet the growing demand for the care and lodging of those afflicted with Alzheimer's disease, dementia and other forms of cognitive impairment in Canada. Prior to founding MCIL, I engaged in extensive research on the subject of the care and lodging of persons afflicted with cognitive impairment. In doing so, I went to the United States to meet with administrators of specialty residential facilities as there were no private pay, standalone facilities in Canada at that time. Having determined that there were no dedicated facilities for such individuals in Canada, notwithstanding their ever-increasing number, I founded MCIL with the mandate to design, build and manage first rate residential accommodations for individuals suffering from Alzheimer's disease, dementia and other forms of cognitive impairment.

27. The shareholders in MCIL and the corresponding percentage of their holdings are Aeolian (50%) and Erika Harris (50%), the latter being the mother of Greg Harris ("**Harris**"), a partner with the law firm of Harris + Harris LLP ("**H&H**") that has acted as legal counsel to the

Applicants in various instances. MCIL is the sole shareholder in MC Burlington and MC Kitchener and holds all Class B shares in MC Oakville, as described in greater detail below. Attached hereto and marked as Exhibit “B” is an organizational chart for MCIL and the relevant Applicants.

28. Like Textbook Suites, once suitable properties have been found, MCIL uses single purpose project specific corporations such as certain of the Applicants – 1703858, MC Burlington, MC Kitchener and MC Oakville - to engage in the development, construction and management of units in the developments.

29. At present, three sites have been purchased for development by MCIL with the goal of eventually building facilities in twenty major Canadian markets. The three sites chosen are located in the Cities of Oakville, Burlington and Kitchener. During the course of researching the construction and management of such facilities, it was determined that the ideal size for each facility is approximately 50,000 sq. ft. on either three or four levels with approximately 60-80 beds. Each of the facilities is contemplated to have a resident to staff ratio of 1:1 and the cost for the residents will vary depending on each resident’s capabilities and special needs.

*c. Low-Rise Condominium Projects*

30. The remaining Applicants – Legacy Lane, Scollard Development and McMurray Street – are engaged in the development of low-rise condominium projects. Although not related to MCIL’s mandate, MCIL acts as the developer for each of the low-rise condominium projects. The shareholders in each of Legacy Lane, Scollard Development and McMurray Street are set out in greater detail below.

31. At present, Legacy Lane, Scollard Development and McMurray Street are engaged in the development of projects located in the Towns of Huntsville, Whitby and Bracebridge, respectively. In the case of the McMurray Street development, it is subject to an agreement of purchase and sale that is scheduled to close on January 6, 2017 (the “**McMurray Street APS**”).



### III. STRUCTURE OF PROJECT FINANCING

32. Whether engaged in the development of student residences, accommodations for those suffering from some form of cognitive impairment or low-rise condominiums, when a suitable site is located for development, the Applicants have sourced part of the funding for land acquisition costs as well as soft costs for their various developments through syndicated mortgage investments (“SMIs”).

33. In January 2010, McMurray Street purchased the property upon which the former Bracebridge High School was located. McMurray Street’s legal counsel for the acquisition was H&H. H&H, and its predecessor firm Harris, Drenfeld & Christie, had acted as legal counsel to me in my personal capacity as well as relating to various business ventures since 1989. As set out herein, Harris and members of his family are direct or indirect shareholders in TSSI, Textbook Suites and the Applicants.

34. In 2012, Harris introduced me to Singh, whom he had previously represented as legal counsel. Singh advised me that he could assist with sourcing the necessary funding for McMurray Street to cover the soft costs associated with the development, things such as marketing, approvals, rezonings, engineering reports and information centre costs. This funding would be arranged through Singh’s corporation, Tier 1 Transaction Advisory Services Inc. (“Tier 1”), and Singh’s network of mortgage brokers.

35. Singh advised that utilizing his sizable network of mortgage brokers, funds could be raised through SMIs. I provided Singh with a compendium of design drawings and other materials in connection with the proposed McMurray Street development and he would market the property to potential investors in the form of SMIs using his mortgage broker network.

36. After he arranged the McMurray Street SMI funding, but prior to the closing of the transaction, Singh advised me that, in addition to the fee that Tier 1 would receive for sourcing the funds, Singh also believed himself entitled to a 20% profit participation in the McMurray Street development. I agreed and that is how Singh’s company, RSCG, came to be a shareholder

in McMurray Street.

37. Singh and Tier 1 were also responsible for sourcing the SMI financing for the acquisition and soft costs associated with the projects that would be developed by MCIL. In return, RSCG was initially granted a 25% shareholder interest in MCIL upon its being incorporated.

38. Finally, in consideration for Tier 1 sourcing the SMI financing for the Scollard Development project, RSCG was granted a 50% shareholder interest in Scollard Development.

39. As at the date of this affidavit, RSCG is no longer a shareholder in McMurray Street, MCIL or Scollard Development.

40. As at the date of this affidavit, neither Singh or Tier 1 have a shareholder interest in MCIL or the Applicants MC Oakville, MC Kitchener, MC Burlington, McMurray Street, Legacy Lane or Scollard Development. The consideration for Singh or Tier 1 sourcing the SMI financing relating to the projects undertaken by the aforementioned Applicants are the brokerage fees payable under the Participation Agreements (as defined below) and fees payable under consulting services agreements between the aforementioned Applicants and each of Tier 1 and Singh, as well as a percentage on account of profit participation as set out in the consulting services agreements.

41. In October 2015, Thompson and I approached Singh about Tier 1 sourcing SMI funding for the projects that would be developed by TSSI and Textbook Suites. In consideration for sourcing the funding, RSCG was granted a shareholder interest in TSSI and Textbook Suites as set out above and it would also be granted a 27.8% equity interest in each project in respect of which Singh or Tier 1 raised SMI funding. As a result, RSCG has both direct and indirect shareholder interests in the Textbook 525, Textbook 555, Textbook 774 Bronson and Textbook Ross Park in the amount of 35% and Textbook 445 in the amount of 33.6% (in the case of Textbook 445, RSCG was granted a 26.3% shareholder interest, not 27.8%).

42. The documentation relating to the SMIs was prepared by H&H and sent to the various

mortgage brokers. Investors would enter into a Syndicated Mortgage Participation Agreement (the "**Participation Agreements**") amongst the various Investors and a corporation that would act as a bare trustee (the "**Bare Trustees**"). Those SMI funds would be pooled and, through the relevant Bare Trustee, lent to a particular Applicant for funding costs relating to a specific project. Attached hereto and marked as Exhibit "**C**" is a sample Participation Agreement.

43. As security for the Applicants' indebtedness to the Investors, the Investors were granted a mortgage over the property acquired for the specific development. By way of example, for the Participation Agreement relating to the Textbook 445 development, Investors were granted a second-ranking mortgage against the lands described in a schedule to the Participation Agreement being the lands acquired for development by Textbook 445.

44. Under the terms of the Participation Agreements, the Bare Trustees were to hold the Investors' mortgage security in trust for them. The Bare Trustees would also be responsible for administering the loans in accordance with the terms of the Participation Agreements.

45. The terms of the loans to the various Applicants were set out in loan agreements between the relevant Bare Trustee and Applicant (the "**Loan Agreements**"). For those Investors whose SMIs were made through an RRSP plan, funds were advanced through Olympia Trust Company. Otherwise, Investors would forward their funds directly to H&H's trust account. The Bare Trustees never received any of the SMI funds. Attached hereto and marked as Exhibit "**D**" is a sample Loan Agreement.

46. After the deduction of fees (legal, brokerage, mortgage origination, referral and management consulting), which were disclosed to the Investors as part of the investment package provided to them prior to their investing, as well as an amount held in trust for the Investors on account of a first year interest reserve, the remaining SMI funds would be advanced to the relevant Applicant. By way of example, on the McMurray Street project, Tier 1 raised \$3.5 million by way of SMI funds and the net amount disbursed to McMurray Street was \$2.1 million.

47. Pursuant to the Participation Agreements and Loan Agreements, an interest reserve

account would be established for each Applicant and each project and a year's worth of interest would be deposited, in trust, with H&H. H&H would then be responsible for making the required interest payments to the Investors for the first year using the funds deposited in the interest reserve accounts for each project. After the first year, each of the Applicants would be responsible for making the interest payments to the Investors under the Loan Agreements.

48. The Bare Trustees and the corresponding Applicants with whom they entered into Loan Agreements are as follows:

- (i) Textbook Student Suites (445 Princess Street) Trustee Corporation ("**Textbook 445 Trustee**") – Textbook 445;
- (ii) Textbook Student Suites (525 Princess Street) Trustee Corporation ("**Textbook 525 Trustee**") – Textbook 525;
- (iii) Textbook Student Suites (555 Princess Street) Trustee Corporation ("**Textbook 555 Trustee**") – Textbook 555;
- (iv) Textbook Student Suites (774 Bronson Avenue) Trustee Corporation ("**Textbook 774 Trustee**") – Textbook 774;
- (v) Textbook Student Suites (Ross Park) Trustee Corporation ("**Textbook Ross Park Trustee**") – Textbook Ross Park;
- (vi) MC Trustee (Kitchener) Ltd. ("**MC Kitchener Trustee**") – MC Kitchener;
- (vii) 2223947 Ontario Limited ("**2223947**") – MC Burlington, 1703858, MC Oakville, Legacy Lane;
- (viii) Scollard Trustee Corporation ("**Scollard Trustee**") – Scollard Development; and
- (ix) 7743718 Canada Inc. ("**7743718**") – McMurray Street.

49. Singh is the sole officer and director of each of the Bare Trustees.

50. On behalf of the Applicants, I would regularly update Singh, as representative of the Bare Trustees, regarding the status of the various projects under development, including how funds were being disbursed by each of the Applicants.

#### IV. FSCO PROCEEDINGS

51. On October 21, 2016, the Applicants were served with the application record of The Superintendent of Financial Services (the “**Superintendent**”) returnable October 27, 2016. As the chief executive of the Financial Services Commission of Ontario (“**FSCO**”), the body tasked with supervising, among other things, mortgage brokering in the Province of Ontario, the Superintendent brought an application seeking the appointment of Grant Thornton Limited (“**GT**”) as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Bare Trustees pursuant to the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”) and the *Courts of Justice Act*, R.S.O. 1990 c. C.43 (the “**FSCO Proceedings**”).

52. As set out in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 in support of the Superintendent’s application (the “**Marfatia Affidavit**”), the Bare Trustees were required to be licensed under the MBLAA, because they were performing mortgage administration functions. The Superintendent asserted that none of the Bare Trustees were licensed under the MBLAA. Attached hereto and marked as Exhibit “**E**” is a copy of the Marfatia Affidavit, excluding exhibits.

53. Furthermore, the Superintendent asserted that Singh had a conflict of interest because, as the sole director, officer and shareholder of each of the Bare Trustees, he could not discharge his duties under the Participation Agreements to administer the mortgages on behalf of the Investors in light of his financial interests in the Applicants. According to the Superintendent, Singh’s financial interests in the Applicants were not sufficiently disclosed to the Investors.

54. Although a shareholder in the Applicants, Singh did not and does not have a controlling interest in the Applicants, has never been an officer or director of any of them and never acted in any way as a controlling mind or principal of any of the Applicants. All corporate decisions are made by myself and Thompson in our capacities as directors and officers of the Applicants.

55. The Marfatia Affidavit stated that FSCO is of the view that SMIs pose a significant risk

to consumer investors and that several techniques used to market SMIs to the investing public belie their risk. It is the Superintendent's position that it was in the public interest to appoint the Receiver to evaluate the condition of each of the Applicants' projects and the SMIs that relate to them and to make prudent decisions in the best interests of the Investors with respect to the administration and enforcement of the relevant loans and mortgages.

56. Although the Applicants were not named as respondents in the FSCO Proceedings, according to the Marfatia Affidavit, the Superintendent thought it necessary to bring the application for the appointment of the Receiver at this particular time because, in light of the current stages of the Applicants' projects and financing arrangements, FSCO Staff believed that the appointment of the Receiver at this time offered the best opportunity for the Receiver to enforce the Investors' rights before the Applicants are able to secure construction financing that would rank in priority to the mortgages held in favour of the Investors, notwithstanding that the Participation Agreements and Loan Agreements contemplated that the SMIs would be subordinated to construction financing.

57. I am advised by Douglas Christie, a partner with Rubin & Christie LLP, litigation counsel to the Applicants, that immediately prior to the Superintendent's application being heard, a revised draft order was provided, which included a provision purporting to add the fees and disbursements of the Receiver and its legal counsel to the indebtedness owed by the Applicants to the Investors under the various real property mortgages granted as security to the Investors.

58. Pursuant to the Order of the Honourable Mr. Justice Newbould dated October 27, 2016 (the "**Appointment Order**"), GT was appointed as trustee (as opposed to receiver and manager) of the Bare Trustees (the "**FSCO Trustee**") and the form of the Appointment Order granted included the amendment adding the fees and disbursements of the FSCO Trustee and its legal counsel to the indebtedness owed by the Applicants to the Investors. Attached hereto and marked as Exhibit "**F**" is a copy of the Appointment Order.

59. As set out above, the Superintendent's application asserted that the Bare Trustees were not properly licensed under the MBLAA and that Singh had a conflict of interest, given his

control of the Bare Trustees as their sole officer, director and shareholder and his financial interest in the Applicants. The Superintendent's application did not allege any wrongdoing on the part of the Applicants and did not claim that Singh in any way had any controlling interest in or influence upon the Applicants.

60. The Applicants were already facing varying degrees of liquidity issues prior to the commencement of the FSCO Proceedings. Certain of the Applicants' mortgages in favour of Investors and certain third party lenders were or were about to fall into interest default. Similarly the Applicants had little or no cash to fund their day-to-day operations absent additional funding, however, the Applicants were diligently working to secure funding and, as described below, had secured certain additional funding which would have been available if not for the commencement of the FSCO Proceedings.

61. Having come to the determination that it would be necessary to raise additional equity or other financing to pay the interest owed on the SMIs and to advance the projects to the construction financing phase, Thompson and I supplied Singh with cashflows for the various Applicants and it was agreed that Singh would be responsible for sourcing the additional equity or other financing. I was advised by Singh that he was close to securing such financing in October 2016 prior to the commencement of the FSCO Proceedings.

62. As set out above, separate and apart from Singh's efforts, the Applicants had also secured or were close to securing construction financing for a number of the projects, however, the commencement of the FSCO Proceedings has cast a shadow of uncertainty over the Applicants and the viability of their projects. Without a restructuring of their balance sheets and an endorsement of support from the Investors on each project in the context of these proposed CCAA proceedings, the Applicants will not be in a position to close any equity financing transaction and those lenders with whom the Applicants have been negotiating for months to secure construction financing and the projects will fall into liquidation by default, even if the Investors wish otherwise and the project is otherwise viable and financeable.

63. I verily believe that if the Initial Order is granted and stability brought to the Applicants' business and the Projects under the supervision of a CCAA Monitor with enhanced powers, in a very short period of time the Investors on each project can be provided with all information necessary to decide for themselves whether the each particular project to be sold as is or developed, together with the Monitor's recommendation in respect of each project, based on expert and independent project consultant advice.

64. If the FSCO Trustee simply seeks to enforce the Investors' rights against the Applicants' projects which, as set out earlier, remain in the pre-construction phase, without a project-by-project analysis that at least considers the possibility of seeing the projects through to completion, instead of Investors recovering the greatest percentage of their investment, as set out in the Marfatia Affidavit, it is clear that Investor losses will be crystallized because a liquidation of the projects at their current as is land values likely will not recover the amounts owed to Investors and the substantial investments by the Applicants (and the Investors) in pre-construction project soft costs will be entirely lost and wasted. To the contrary, I verily believe that such enforcement efforts will not maximize value for the Investors, however I also recognize that the decision is not and should not be up to me – it should be up to the Investors themselves, once they have the necessary information in hand, including the Monitor's recommendation regarding all options relating to the projects before making a final decision on each.

65. The Applicants' management team, including myself, have engaged in open and I believe productive discussions with Investors regarding how best to address the liquidity issues that face the Applicants, the future of the various projects and the benefits that would accrue to the Investors from a CCAA proceeding.

66. It is my understanding that the Investors have organized an ad hoc committee and are finalizing arrangements to retain legal counsel and intend to have their legal counsel seek appointment as representative counsel for the Investors in the CCAA proceedings. The Applicants would be supportive of such an appointment to ensure transparency and



communication so that the Court and others can be confident that the Investors are properly informed, advised and heard in the CCAA proceedings.

## V. OVERVIEW OF THE TEXTBOOK SUITES PROJECTS

### A. Textbook (525 Princess Street) Inc.

67. Textbook 525 was incorporated on September 28, 2015 under the *Business Corporations Act* (Ontario) (“**OBCA**”) and is the owner of the properties municipally known as 525, 527 and 531 Princess Street and 349 and 351 Alfred Street, Kingston, Ontario (the “**Textbook 525 Property**”). The shareholders in Textbook 525 are TSSI (72.2%) and RSCG (27.8%).

68. The Textbook 525 Property was purchased for \$2.4 million in December 2015. Along with the 555 Princess Project, the 525 Princess Project (both terms as defined below) will serve as bookend properties on Princess Street, a major arterial roadway in the City of Kingston scheduled for meaningful civic beautification. TSSI has been working with design and consulting teams to conceive a project that meets the City’s requirements in respect of height and density while still remaining economically viable.

69. The 525 Princess Project will contain a lobby and a vestibule on the ground floor, a loading and garbage area and street front convenience for retail use. The 2<sup>nd</sup> and 3<sup>rd</sup> levels of the project will provide for 53 parking stalls and bicycle storage. The 4<sup>th</sup> and 5<sup>th</sup> levels will contain 10 one and two bedroom suites on each floor and the 6<sup>th</sup> and 7<sup>th</sup> levels will contain 9 suites per floor. The 8<sup>th</sup> level penthouse will have 7 one and two bedroom suites. In total, the 525 Princess Project will have 45 suites (the “**525 Princess Project**”).

70. TSSI and its consulting team have participated in a pre-consultation round of meetings with municipal staff and, prior to the commencement of the FSCO Proceedings and the appointment of the FSCO Trustee, anticipated making formal rezoning and development applications in December 2016.

i. Assets and Liabilities

71. Textbook 525's books and records indicate that, as of November 16, 2016, the value of the company's assets is approximately \$5.4 million. The current value of the 525 Property, based upon general market conditions, is \$2.6 million. The company's other assets include capitalized project soft costs in the amount of \$2.1 million.

72. Based upon an "as completed" appraisal by Michael Cane Consultants ("**Cane Consultants**"), the total project revenue will be \$46.7 million versus total project costs, including acquisition of the 525 Property and servicing of the mortgage, in the amount of \$40.3 million.

73. Textbook 525's books and records also indicate that, as of November 16, 2016, the company has liabilities of approximately \$6.44 million, principally made up of \$43,075 owing to the City of Kingston on account of outstanding property taxes, and \$6.4 million to Textbook 525 Trustee, which indebtedness is secured by way of a first-ranking mortgage over the Textbook 525 Property.

**B. Textbook (555 Princess Street) Inc.**

74. Textbook 555 was incorporated on August 14, 2015 under the OBCA and is the owner of a half-acre property municipally known as 555 Princess Street, Kingston, Ontario (the "**Textbook 555 Property**"). The shareholders in Textbook 555 are TSSI (72.2%) and RSCG (27.8%).

75. The Textbook 555 Property was purchased for \$2.0 million in October 2015. The site of a former service station located near Queen's University, the prior structures on the property were demolished and the property environmentally remediated by Standard Oil in 2011. After purchasing the property, TSSI commenced design and development studies to determine the feasibility of an 11 storey mid-rise, purpose built student residence on the site (the "**555 Princess Project**").

76. Located in the Williamsville neighbourhood of the City of Kingston, an area scheduled for substantial civic revitalization, the 555 Princess Project will contain a lobby and a vestibule on the ground floor, short term use parking stalls and street front convenience for retail use. Additional parking is proposed on the 2<sup>nd</sup> and 3<sup>rd</sup> levels. The 4<sup>th</sup> through 7<sup>th</sup> levels are to be comprised of 11 one and two bedroom suites per floor. The 8<sup>th</sup> level will contain 10 one and two bedroom suites. The 9<sup>th</sup> and 10<sup>th</sup> levels will contain 7 one and two bedroom suites and the penthouse level will have 4 one bedroom units and a building amenity area. In total, the 555 Princess Project will have 32 parking spaces and 72 one and two bedroom suites.

77. Initial pre-consultation meetings have been held with the City of Kingston and TSSI consultants are in the process of finalizing design, development, engineering, urban design, transportation and parking studies, storm water, wind, servicing and engineering studies and all other required background work for submission to the City in December 2016, all in support of a formal re-zoning application.

*i. Assets and Liabilities*

78. Textbook 555's books and records indicate that, as of November 16, 2016, the value of the company's assets is approximately \$7.0 million. The current value of the 555 Property, based upon general market conditions, is \$2.2 million. The company's assets also include capitalized project soft costs in the amount of \$2.8 million.

79. Based upon an "as completed" appraisal by Cane Consultants, the total project revenue will be \$61.9 million versus total project costs, including the acquisition of the 555 Property and servicing of the mortgage, in the amount of \$53.3 million.

80. Textbook 555's books and records also indicate that, as of November 16, 2016, the company has liabilities of approximately \$8.0 million, comprised principally of \$15,641 owing to the City of Kingston on account of outstanding property taxes and approximately \$7.9 owing

million to Textbook 555 Trustee, which indebtedness is secured by way of a first-ranking mortgage over the Textbook 555 Property.

**C. Textbook (445 Princess Street) Inc.**

81. Textbook 445 was incorporated on April 6, 2016 under the OBCA and is the owner of the properties municipally known as 429 and 445 Princess Street and 208 and 210 Division Street, Kingston, Ontario (“**Textbook 445 Property**”). The shareholders in Textbook 445 are Textbook Suites (73.7%) and RSCG (26.3%).

82. The Textbook 445 Property was purchased for the aggregate amount of \$9.7 million in July and September 2016 (429 and 445 Princess were purchased in July and 208 and 210 Division Street were purchased in September). The Textbook 445 Property is a strategically located, landmark property on a corner site a few blocks from Queen’s University. The property is home to a 6000 sq. ft. Shoppers Drug Mart store and the site is scheduled for a major redevelopment for retail, amenities and a 32 storey residential tower for Queen’s University students (the “**445 Princess Project**”).

83. The Textbook 445 Property is the pre-eminent development site in close proximity to Queen’s University. Approximately half an acre in size, the site occupies a triangular orientation at the intersection of Princess and Division Streets, both of which are major arterial roadways in the City, with the latter leading into the City from Highway 401. The site is the cornerstone property for the commencement of the Williamsville Corridor, a special policy area scheduled for major revitalization.

84. Textbook Suites has met with all levels of civic government including the Mayor, local councilors, head of the Williamsville Neighbourhood Ratepayers and representatives of the local Business Improvement Area, all of whom support a major mixed use redevelopment on the Textbook 445 Property and view the 445 Princess Project as the catalyst to significant intensification and revitalization within the Williamsville neighbourhood. Textbook Suites has

held meetings with City staff in planning, engineering and works. At 32 storeys, the 445 Princess Project will be the tallest building in the City.

85. Textbook Suites' team has presented a design concept to the City comprised of a 2 storey Shoppers Drug Mart store complete with an "urban food concept store" being developed by Loblaws and amenity areas and medical retail uses on the 3<sup>rd</sup> and 4<sup>th</sup> floors. The 5<sup>th</sup> through 32<sup>nd</sup> floors will contain a mix of one and two bedroom suites. Local officials have already voted to bring major trunk sewers to the site of the 445 Princess Project through a downtown route at a cost of \$20 million, two years earlier than previously scheduled to ensure the new sewer line will be at the edge of the Textbook 445 Property when construction commences. Adjacent land owners have reached out to Textbook Suites to gauge its level of interest in combining adjacent sites to make a more comprehensive development. Textbook Suites is currently considering its options and is advancing alternative concepts for different iterations for the 445 Princess Project. It is anticipated that a formal rezoning and development application will be advanced in early 2017 once background studies, design development concepts and pro-forma analysis is completed and that the 445 Princess Project will be completed in 2019.

*i. Assets and Liabilities*

86. Textbook 445's books and records indicate that, as of November 16, 2016, the value of the company's assets is approximately \$15.5 million. The current value of the 445 Property, based upon general market conditions, is \$8.2 million. The company's assets also include capitalized project soft costs in the amount of \$400,000

87. Based upon an "as completed" appraisal by Cane Consultants, the total project revenue will be \$102.5 million versus total project costs, including the acquisition of the 445 Property and servicing of the mortgage, in the amount of \$89.5 million.

88. Textbook 445's books and records also indicate that, as of November 16, 2016, the company has liabilities of approximately \$15.9 million, including a \$7.0 million first mortgage

loan in favour of KingSett Mortgage Corporation ("**KingSett**") which is secured by way of a against 429 and 445 Princess Street. Kingsett has also registered a financing statement under the *Personal Property Security Act*, R.S.O., c. P.10, as amended (the "**PPSA**") as against "inventory", "equipment", "accounts" and "other". Textbook 445 is also indebted in the amount of \$8.4 million to Textbook 445 Trustee which is secured by way of a second-ranking mortgage over 429 and 445 Princess Street. Lastly, Textbook 445 is indebted in the amount of \$200,000 to 1556910 Ontario Limited on account of a vendor take-back mortgage which is secured by way of a first-ranking mortgage over 208 and 210 Division Street.

**D. Textbook (774 Bronson) Inc.**

89. Textbook 774 was incorporated on November 24, 2015 under the OBCA and is the owner of the properties municipally known as 774 Bronson Avenue and 557 Cambridge Street South, Ottawa, Ontario (the "**Bronson Property**"). The shareholders in Textbook 774 are Textbook Suites (72.2%) and RSCG (27.8%).

90. The Bronson Property was purchased for \$10.250 million in April 2016. The property is a thru-lot with frontage on both Bronson Avenue and Cambridge Street South and is approximately three quarters of an acre in size. The property is a 15 minute walk to the main campus of Carleton University and borders an established residential neighbourhood to the west.

91. Existing site specific zoning obtained by the previous owner permitted a luxury, two building condominium that the former owner took to market on several occasions, however, it was unable to pre-sell the appropriate number of suites necessary to move forward. Textbook 774 purchased the property from the former developer and commenced a full redesign of the building as a purpose built student residence (the "**774 Bronson Project**").

92. Following many meetings between Textbook Suites and the planning department, the Dow's Lake Ratepayers Association and the local councilor, a consensus was reached between the parties on the overall building massing and urban design details. The mixed use building features a stepped building design that will be 12 storeys on Bronson Avenue, stepping down to

4 storeys abutting Cambridge Avenue, an established up-scale residential street to the west. The proposed design features a total of 172 residential suites.

93. The building will have a strong ground floor retail presence along the frontage on Bronson Avenue. Textbook Suites submitted a detailed parking study and the City accepted the proposed 22 underground stalls and 10 surface spaces as being sufficient for student uses.

94. The design and project details are acceptable to the City and in October 2016, the formal site specific rezoning and site plan approval application was presented to the City planners for consideration. Textbook Suites does not expect any objections to the application as the bulk of the project details were agreed upon via a number of stakeholder consultations prior to the application's submission.

95. Subject of course to the wished of the 774 Bronson Investors in these proceedings, it is the intention of Textbook Suites to commence marketing the 774 Bronson Project as a residential condominium building for sale to investors in January of 2017. It is anticipated that it will be presented to the marketplace in the Winter of 2017 following rezoning and site plan approval. Doran Construction, one of Canada's largest construction enterprises, has been hired to price the project.

*i. Assets and Liabilities*

96. Textbook 774's books and records indicate that, as of November 16, 2016, the value of the company's assets is approximately \$16.2 million. The current value of the Bronson Property, based upon general market conditions, is \$10.25 million. The company's assets also include capitalized project soft costs in the amount of \$4.1 million.

97. Based upon an "as completed" appraisal by Cane Consultants, the total project revenue will be \$68.6 million versus total project costs, including acquisition of the Bronson Property and servicing the mortgage, in the amount of \$58.4 million.

98. Textbook 774's books and records also indicate that, as of November 16, 2016, it has liabilities of approximately \$16.1 million, including the sum of \$44,000 owing to the City of Ottawa on account of unpaid realty taxes. The company is indebted in the amount \$5.7 million to Vector Financial Services Limited ("**Vector**"), which is secured by way of a first ranking mortgage over the Bronson Property. Vector also has two PPSA financing statements, one in respect of "inventory", "equipment", "accounts", "other" and "motor vehicles" and the other in respect of "accounts" and "other". Textbook 774 is also indebted in the amount of \$10.8 million to Textbook 774 Trustee which is secured by way of a second-ranking mortgage over the Bronson Property.

#### **E. Textbook Ross Park Inc.**

99. Textbook Ross Park was incorporated on April 16, 2015 under the OBCA and is the owner of the properties municipally known as 1234, 1236, 1238, 1240, 1244 and 1246 Richmond Street, London, Ontario (the "**Ross Park Property**"). The shareholders in Textbook Ross Park are TSSI (72.2%) and RSCG (27.8%).

100. The Ross Park Property was purchased for \$7.0 million in July 2015. The development to be constructed on the Ross Park Property consists of a purpose built, 15 storey student residence located a short distance from Western University (the "**Ross Park Project**"). Textbook Ross Park purchased six houses with frontage on Richmond Street and commenced design development, background reports and planning studies in support of an Official Plan Amendment, rezoning and Site Plan Application to the Planning Department of the City of London. Throughout the summer and fall of 2015, TSSI refined the design, overall density and number of suites in consultation with City planners.

101. After receiving tacit acceptance of the project parameters from the City, TSSI took the Ross Park Project to the investor marketplace and, after obtaining warranty approval from Tarion Warranty Corporation, marketed and sold 219 condominium suites to investors within the proposed building between the Summer of 2015 and Winter of 2016.



102. In the Fall of 2015, TSSI made a formal application to the City of London to amend the City's official plan and seek rezoning of the appropriate by-law to change the existing single family residential uses to high rise residential. The City of London provided its comments to TSSI which required major revisions to the building design notwithstanding that during the Summer of 2015, TSSI had been advised that the design was acceptable. Nevertheless, TSSI commenced major revisions and in the Spring of 2016 received approval from all municipal and provincial agencies having jurisdiction, save and except the Upper Thames Region Conservation Authority (the "UTRCA"). The UTRCA determined that the Ross Park Property was situated in a floodway as opposed to a flood fringe. TSSI has engaged Marshall Macklin Monaghan of the MMM Group, a leading water resources engineering firm, to prepare further background studies in support of TSSI's position that the site of the Ross Park Property is within the flood fringe.

103. TSSI has also engaged Davies Howe Partners to appeal the decision of the UTRCA to the Ontario Municipal Board. It is expected that a pre-hearing conference will be held in April 2017. In the interim, work continues on hydrogeological engineering, surveying and computer modelling exercises related to the Ross Park Project's development.

*i. Assets and Liabilities*

104. Ross Park's books and records indicate that, as of November 16, 2016, the value of the company's assets is approximately \$15.6 million. The current value of the Ross Park Property, based upon general market conditions, is \$7.9 million. The company's assets also include capitalized project soft costs in the amount of \$6.4 million.

105. Based upon an "as completed" appraisal by Cane Consultants, the total project revenue will be \$62.6 million versus total project costs, including the acquisition of the Ross Park Property and servicing the mortgage, in the amount of \$53.3 million.

106. Textbook Ross Park's books and records also indicate that, as of November 16, 2016, the company has liabilities of approximately \$15.9 million, including \$29,616 owing to the City of

London \$29,616 on account of outstanding property taxes. The company is also indebted in the amount of \$3.5 million to 2377358 Ontario Limited and Creek Crest Holdings Inc. in respect of a vendor take-back mortgage which is secured by way of a first-ranking mortgage over the Ross Park Property. Textbook Ross Park is also indebted in the amount of approximately \$11.6 million to Textbook Ross Park Trustee which is secured by way of a second-ranking mortgage over the Ross Park Property.

## VI. OVERVIEW OF THE MCIL PROJECTS

### A. Memory Care Investments (Kitchener) Inc.

107. In May 2013, MCIL purchased an operating retirement home located on the property municipally known as 169 Borden Avenue, Kitchener, Ontario (the “**MC Kitchener Property**”) from A. Farber & Partners Inc., acting as receiver for, among others, Dondeb Inc. and 1711060 Ontario Ltd. MCIL assigned its interest in the MC Kitchener Property to 2375219 Ontario Ltd (“**2375219**”). The sole shareholder in MC Kitchener is MCIL.

108. MCIL incorporated Lafontaine Terrace Management Corporation to be the operating entity to operate the facility for a period of approximately 9 months until the remaining 24 residents could be moved to alternate accommodations at which point the existing building was demolished. 2372519 subsequently transferred its interest in the MC Kitchener Property to MC Kitchener.

109. The MC Kitchener Property was purchased for \$3.950 million and is approximately 1.5 acres and is situated in an established residential neighbourhood close to the City of Kitchener’s downtown core. After the demolition of the prior facility, MCIL commenced design development studies and a by-law amendment to permit the site specific uses associated with a 3 storey and 81 suite Alzheimer’s residential facility (the “**MC Kitchener Project**”). The site is fully zoned and complies with all municipal regulations. A number of iterations of the building have been reviewed with the City’s Planning and Development Services department. The MC

Kitchener Project has received draft site plan approval and a building permit application has been made. The City has forwarded its development agreement to MCIL for execution.

110. MCIL expects to receive the final building permit in April of 2017 and, subject to withes of the Investors on this project, would intend to commence construction shortly thereafter.

*i. Assets and Liabilities*

111. MC Kitchener's books and records indicate that, as of October 31, 2016, the value of the company's assets is approximately \$13.3 million. The current value of the MC Kitchener Property, based upon general market conditions, is \$4.0 million. The company's assets also include project hard costs in the amount of \$500,000 and capitalized project soft costs in the amount of \$6.4 million.

112. Based upon an "as completed" appraisal by Cane Consultants, the total project revenue will be \$44.5 million versus total project costs, including the acquisition of the MC Kitchener Property and servicing the mortgage, in the amount of \$40.2 million.

113. MC Kitchener's books and records also indicate that, as of October 31, 2016, the company has liabilities of approximately \$13.3 million, including \$6,968 owing to the City of Kitchener on account of outstanding realty taxes. The company is also indebted in the amount of approximately \$1.0 million to 2174217 Ontario Inc. ("2174217"), which is secured by way of a first-ranking mortgage over the MC Kitchener Property. 2174217 has also registered a PPSA financing statement in respect of "inventory", "equipment", "accounts", "other". MC Kitchener is also indebted in the amount of approximately \$10.6 million to MC Kitchener Trustee, which is secured by way of a second-ranking mortgage over the MC Kitchener Property.

**B. Memory Care Investments (Burlington) Ltd. and 1703850 Ontario Inc.**

114. 1703850 was incorporated on October 12, 2006 under the OBCA and is the owner of the properties municipally known as 2168 and 2174 Ghent Avenue, Burlington, Ontario (the "MC

**Burlington Property**”). MC Burlington purchased all of the outstanding shares of 1703850 and 1703850 remains the owner of the MC Burlington Property and is a wholly-owned subsidiary of MC Burlington. The sole shareholder in MC Burlington is MCIL.

115. The MC Burlington Property was purchased in the manner described above for \$2.5 million in May 2013. The site area is approximately 1.5 acres and is located in an established residential area in downtown Burlington comprised mostly of 1960s era bungalows and a few low rise apartment buildings. The MC Burlington Property is zoned to permit a seniors residence and MCIL made application to the municipality for both site plan and building permit approval in December 2015. The property is zoned and approved for the intended use as an Alzheimer’s residential care facility (the “**MC Burlington Project**”). MCIL has paid all municipal development charges, levies and fees and received a building permit in July 2016.

116. MCIL entered into a construction management contract with Varcon Construction (“**Varcon**”) in January 2016 in respect of the construction of the MC Burlington Project. The site has been cleared and stripped of vegetation and topsoil and construction has commenced. Approximately \$2.0 million had been raised and was earmarked for the payment of initial construction costs. Footings and foundations were underway, however, when the FSCO Proceedings were initiated and the aforementioned funding for initial construction costs delayed, Varcon shut down operations on the site.

*i. Assets and Liabilities*

117. MC Burlington’s books and records indicate that, as of October 31, 2016, the value of the company’s assets is approximately \$12.9 million. The current value of the MC Burlington Property, based upon general market conditions, is \$6.0 million. The company’s assets also include project hard costs in the amount of \$800,000 and capitalized project soft costs in the amount of \$7.0 million.

118. Based upon an “as completed” appraisal by Cane Consultants, the total project revenue will be \$36.2 million versus total project costs, including the acquisition of the MC Burlington Property and the servicing the mortgage, in the amount of \$31.1 million.

119. MC Burlington’s books and records indicate that, as of October 31, 2016, the company has liabilities of approximately \$12.9 million. MC Burlington owes the City of Burlington \$1,655 in outstanding realty taxes. The company is indebted in the amount of approximately \$1.250 million to 2174217 which is secured by way of a first-ranking mortgage over the MC Burlington Property. MC Burlington is also indebted in the amount of approximately \$8.4 million to 2223947 which is secured by way of a second-ranking mortgage over the MC Burlington Property.

#### C. **Memory Care Investments (Oakville) Ltd.**

120. MC Oakville was incorporated on June 5, 2012 under the OBCA and is the owner of the properties municipally known as 103 and 109 Garden Drive, Oakville, Ontario (the “**MC Oakville Property**”). The shares in MC Oakville are divided into Class A and Class B shares as follows: (i) Class A shares – 2463322 Ontario Inc. (“**2463322**”) (20%), Agile International Inc. (“**Agile**”) (20%), Canada Opulence Investment Inc. (“**Canada Opulence**”) (20%), Ledream International Inc. (30%) (“**Ledream**”) and Jin Zhou (“**Zhou**”) (10%); and (ii) Class B shares – MCIL (100%). 2463322, Agile, Canada Opulence, Ledream and Zhou are also SMI Investors.

121. The MC Oakville Property was purchased for \$1.945 million in September and October 2012 and is one third of an acre in size and has been rezoned to permit a stand-alone, private pay Alzheimer’s residential facility. The Official Plan Amendment, re-zoning, site plan approval and building permit applications commenced in 2013 and have only recently been approved in full and final form after numerous iterations between MCIL, its consultants, neighbouring residential owners, the Town of Oakville, the Region of Peel and the building’s manager, Eldercare Management. The removal of an ‘H’ holding designation which had been registered against the MC Oakville Property since its acquisition and related to the installation of a water main by the

Region of Peel was removed on November 7, 2016 clearing the way for the issuance of a building permit and the start of construction.

122. It is expected that the facility will be comprised of 60 residential suites on 4 storeys and will have 24 underground parking spaces (the “MC Oakville Project”).

123. MCIL has entered into a Construction Management Agreement with Varcon in respect of construction of the MC Oakville Project and, subject to the wishes of the MC Oakville Investors, intends to commence construction as soon construction financing can be arranged.

*i. Assets and Liabilities*

124. MC Oakville’s books and records indicate that, as of October 31, 2016, the value of the company’s assets is approximately \$15.2 million. The current value of the MC Oakville Property, based upon general market conditions, is \$5.0 million. The company’s assets also include project hard costs in the amount of \$200,000 and capitalized project soft costs in the amount of \$8.9 million.

125. Based upon an “as completed” appraisal by cane Consultants, the total project revenue will be \$38.1 million versus total project costs, including the acquisition of the MC Oakville Property and servicing the mortgage, in the amount of \$33.8 million.

126. MC Oakville’s books and records also indicate that, as of October 31, 2016, it has liabilities of approximately \$15.2 million. MC Oakville owes the City of Oakville \$9,857 on account of outstanding realty taxes. The company is indebted in the amount of approximately \$1.250 million to 2174217, which is secured by way of a first-ranking mortgage over the MC Oakville Property. MC Oakville is also indebted in the amount of approximately \$12.7 million to 2223947 which is secured by way of a second ranking mortgage over the MC Oakville Property.

127. Prior to the commencement of the FSCO Proceedings, MCIL had also commenced discussions with Pinnacle Wealth Brokers (“**Pinnacle**”) of Calgary, Alberta to jointly develop, own and manage a number of facilities across Canada commencing with the projects in Oakville, Burlington and Kitchener. A letter of intent was signed, however, Pinnacle stepped away from further negotiations with MCIL when the FSCO Proceedings were initiated. I have been advised by Wes Mills, Chief Information Officer with Pinnacle, that Pinnacle is prepared to recommence discussions as soon as the situation is normalized.

128. On behalf of MCIL, I have also met with representatives of Revera Inc., a national provider of retirement residential accommodations, to discuss a potential joint venture relationship to cooperate in the management of the MC Kitchener, MC Oakville and MC Burlington facilities upon completion of construction, however, in light of the Applicants’ liquidity issues and the uncertainty arising from the FSCO Proceedings, these discussions are unable to progress.

#### **D. Legacy Lane Investments Ltd.**

129. Legacy Lane was incorporated on September 21, 2012 under the OBCA and is the owner of the property municipally known as 16 Legacy Lane, Huntsville, Ontario (the “**Legacy Lane Property**”). The shareholders in Legacy Lane are Aeolian (50%) and R. Alan Harris (50%) who is the father of Greg Harris.

130. The Legacy Lane Property was purchased for \$650,000 in October 2012 and is located adjacent to a retirement building owned and managed by Chartwell Retirement Residences. Initially, it was envisioned that a 4 storey, 67 suite retirement building with 110 underground parking spaces would be constructed on the site but test marketing with local real estate experts revealed there was little or no market appetite for any product that was not a townhome or “bungaloft”. Based on that market assessment, MCIL revised the concept from a low rise condominium building to 33 attached townhomes with garages, walkouts and second storey lofts (the “**Legacy Lane Project**”).

131. The site is approximately 4.46 acres and has been cleared and graded and is ready for construction. The zoning has been received in full and final form for the townhomes and preliminary building permits to commence site servicing have also been obtained. It is anticipated that construction could commence within three months. Legacy Lane was seeking \$1.2 million of construction financing that would be used to construct main sanitary sewers, lateral services, gas, hydro, and a graded road bed. There have been several interested parties that have expressed an interest in providing financing although no firm commitments have been provided to MCIL thus far. In addition, two parties have expressed an interest in buying the Legacy Lane Property outright although no firm commitment has been provided to MCIL thus far.

*i. Assets and Liabilities*

132. Legacy Lane's books and records indicate that, as of October 31, 2016, the value of the company's assets is approximately \$4.3 million. I verily believe that the current value of the Legacy Lane Property, based upon general market conditions, is \$3.0 million. The company's assets also include project hard costs in the amount of \$200,000 and capitalized project soft costs in the amount of \$3.3 million.

133. Legacy Lane's books and records also indicate that, as of October 31, 2016, the company has liabilities of approximately \$4.3 million. Legacy Lane owes the Town of Huntsville \$6,807 in outstanding realty taxes. The company is also indebted in the amount of \$3.5 million to 2223947, which is secured by way of a first-ranking mortgage over the Legacy Lane Property.

**E. McMurray Street Investments Inc.**

134. McMurray Street was incorporated on September 18, 2009 under the OBCA and is the owner of the property municipally known as 28 McMurray Street, Bracebridge, Ontario (the "McMurray Street Property"). The shareholders in McMurray Street are D. Arsenault Holdings Inc. (8%), Davies Family Trust (30%), R. Alan Harris (16%) and Tori Manchulenko (46%).



135. The McMurray Street Property was purchased for \$650,000 in January 2010 and the development on the site will be comprised of lofts and condominium residences in 4 separate Phase 1 residential buildings on approximately 2.9 acres of the 5.6 acre site (the “**McMurray Street Project**”).

136. The cornerstone of the McMurray Street Project is the original Bracebridge High School building constructed in 1920. This two storey building will be renovated into 12 loft style condo suites. Three other buildings are to be built on the remainder of the 2.9 acre Phase 1 site. All are 5 storeys in height, and are mostly two bedroom, two bathroom suites. The 4 Phase 1 building development totals 88 suites. There are currently 26 firm sales and a letter of intent has been received from Centurion Mortgage Capital Corporation (“**Centurion**”) with respect to construction financing in respect of Phase 1 now that sales targets have been reached.

137. MCIL renovated the existing Bracebridge High School into a condominium sales centre complete with two model suites, scale model, office and presentation centre. The balance of the 160,000 sq. ft. multi-storey high school was demolished in 2014 and 2015 and the site has been cleared and is ready for construction. The McMurray Street Project has received site plan approval (subject to minor modifications due to building design changes). MCIL has received engineering servicing approval from the Township and a building permit could be obtained within 90 days. The balance of the 5.6 acre McMurray Street Property is approved for medium density residential uses.

i. Assets and Liabilities

138. McMurray Street’s books and records indicate that, as of October 31, 2016, the value of the company’s assets is approximately \$8.6 million. McMurray Street entered into the McMurray Street APS which is set to close on January 6, 2017. Based upon the McMurray Street APS, the current value of the McMurray Street Property is \$8.0 million. The company’s assets include project hard costs in the amount of \$1.8 million and project soft costs in the amount of \$6.15 million.

139. McMurray Street's books and records indicate that, as of October 31, 2016, the company has liabilities of approximately \$8.6 million. McMurray Street owes the Town of Bracebridge \$24,261 on account of outstanding realty taxes. The company is also indebted in the amount of \$2.0 million to Pillar Financial Services Inc. ("**Pillar Financial**"), which is secured by way of a first-ranking mortgage over the McMurray Street Property. It is also indebted to 7743718 in the amount of \$3.5 million which is secured by way of a second-ranking mortgage over the McMurray Street Property.

140. Both mortgages came due in May 2016. McMurray Street has kept payment of interest under the Pillar Financial mortgage current, however, interest payments to 7743718 remain in arrears as of July 2016.

141. The McMurray Street APS provides for a vendor take-back mortgage in the amount of \$2.0 million. The net closing cash proceeds of \$6.0 million will (subject to issues relating to the FSCO Appointment Order) be sufficient to repay both mortgages on the McMurray Street Property including the interest arrears owing to 7743718. The vendor take-back mortgage will rank in second position on closing and McMurray Street has agreed to enter into a joint venture agreement with 2379249 Ontario Ltd., operating as D.L. Hunter, to co-develop the Phase 1 lands.

#### **F. Scollard Development Corporation**

142. Scollard Development was incorporated on March 14, 2013 under the OBCA and is the owner of the properties municipally known as 1606, 1610 and 1614 Charles Street East, Whitby, Ontario (the "**Scollard Property**"). The shareholders in Scollard Development are Aeolian (50%) and Erika Harris (50%).

143. The Scollard Property was purchased for \$9.0 million in September 2014. The site is bordered by high rise residential, single family residential, light industrial uses and open space. The project to be constructed on the Scollard Property, the Boathaus Condominium project (the "**Boathaus Project**"), was initially conceived as a 4 storey, 217 suite condominium project,

however, due to stronger than anticipated sales performance, the project was increased in size to add a fifth storey and an additional 74 suites bringing the total number of suites to 291.

144. Scollard Development cleared the site but left a single storey, 7500 sq. ft. existing commercial building that has been fully renovated for use as the Boathaus Project sales and presentation centre.

145. Currently, Scollard Development has firm sales of 214 suites. The Boathaus Project is the best-selling condominium development east of the City of Toronto. It has been so successful that Scollard Development is considering adding a 6<sup>th</sup> floor and a further 74 suites for a total of 365 suites. The Boathaus Project has zoning in full and final form and has sufficient density permissions to construct 367,000 sq. ft. of development, 90,000 sq. ft. more than the current plans envision. MCIL has submitted all required plans and studies to the Town of Whitby and Durham Region for approval. There are no impediments to moving forward and MCIL intended to submit for final site plan approval and building permits in December 2016.

146. MCIL has received a construction financing commitment from Centurion and a letter of intent from DUCA Credit Union in an aggregate amount sufficient to build the 5 storey project and retire the existing Firm Capital Corporation ("**Firm Capital**") first mortgage on the project when it comes due. Centurion has also agree to fund certain additional soft costs required by the project in advance of construction financing.

147. The Centurion construction and financing was intended to close on November 2, 2016, however, with the commencement of the FSCO Proceedings, matters have understandably been delayed in the circumstances.

*i. Assets and Liabilities*

148. Scollard Development's books and records indicate that, as of October 31, 2016, the value of the company's assets is approximately \$20.2 million. The current value of the Scollard

Property, based upon general market conditions, is \$10.0 million. The company's assets also include capitalized project soft costs in the amount of \$11.2 million.

149. Based upon an "as completed" appraisal by Cane Consultants, the total project revenue will be \$90.6 million versus total project costs, including the acquisition of the Scollard Property and servicing the mortgage, in the amount of \$80.0 million.

150. Scollard Development's books and records also indicate that, as of October 31, 2016, the company has liabilities of approximately \$20.2 million. Scollard Development owes approximately \$2.35 million to Firm Capital, which is secured by way of a first-ranking mortgage over the Scollard Property that comes due in January of 2017 and which was intended to be repaid from the Centurion/Duca financing. Firm Capital has also registered a PPSA financing statement in respect of "inventory", "equipment", "accounts" and "other". The company also owes approximately \$13.6 million to Scollard Trustee, which is secured by way of a second-ranking mortgage over the Scollard Property.

## **VII. ROLE OF EXISTING MANAGEMENT IN CCAA PROCEEDINGS**

151. In addition to its prescribed rights and obligations under the CCAA, the Applicants have requested that the Monitor be granted enhanced powers, including but not limited to (i) promptly negotiating the terms of a protocol between the Monitor and the FSCO Trustee in respect of the CCAA proceedings; (ii) reviewing the existing "as is" appraisals of the Applicants' projects and commissioning updates or new appraisals if the Monitor deems appropriate; (iii) causing the Applicants to engage Pelican Woodcliff Inc. or such other project consultants as the Monitor deems appropriate as an independent project consultant in respect of each project; and (iv) preparing a report to the court setting out the Monitor's conclusions regarding the relative financial outcomes and risks to the Investors of each project of the sale of the project; completion of the project and any other commercially reasonable realization or development process in respect of the project.

152. As set out above, it is intended that the Monitor will make all material decisions in respect of the operation of the Applicants' business and given our extensive knowledge of the Applicants and the projects, Thompson and I will remain available to the Monitor throughout the CCAA proceedings as information resources. In addition, we will provide assistance in providing all necessary information required for the feasibility studies to be undertaken by the project consultants, progressing the zoning and approvals for projects as may be requested by the Monitor, assisting with the closing of the McMurray Street APS and whatever other assistance may be provided to the Monitor in an effort to preserve and maximize value for the Investors.

153. Further in that regard and in recognition of the Applicants' primary objective of acting in the best financial interests of the Investors, Thompson and I have worked diligently to reduce the monthly project management fees payable by the Applicants to Textbook Suites and MCIL by over 40%, which management fees include our personal compensation, expenses and benefits which we have also agreed to reduce by approximately 40%. The management fees payable by the Applicants are included and set out in detail in the Cash Flow Forecast (as defined below).

#### **VIII. OVERVIEW OF CASH FLOW FORECAST**

154. The Applicants have prepared a cash flow forecast (the "**Cash Flow Forecast**"), with the assistance of the proposed Monitor, for the period from the week ending December 11, 2016 to the week ending January 8, 2017. The principal uses of cash during such period will consist of paying the Applicants' ongoing day-to-day operational expenses and professional fees and disbursements in connection with the CCAA proceedings. A copy of the Cash Flow Forecast is attached hereto and marked as Exhibit "G".

155. The Applicants will receive interim financing from the DIP Lender pursuant to the DIP Agreement (such terms as defined below). The Applicants currently forecast that they have sufficient cash flow to continue operating in the ordinary course during the CCAA proceedings solely due to the interim funding made available to them by the DIP Lender.

## IX. THE CCAA PROCEEDINGS AND RELIEF SOUGHT

### *a. Application of the CCAA*

156. The Applicants are affiliated companies that face total claims well in excess of \$5,000,000 and all of them have assets in Canada.

157. Absent the DIP funding made available to the Applicants, which funding would not be available outside of a CCAA proceeding, the Applicants will not have sufficient financial means to meet their obligations as they become due.

### *b. Stay of Proceedings*

158. The Applicants require a stay of proceedings in order to preserve the *status quo* and bring stability to their business operations and to implement restructuring strategies for each Applicant approved by each Applicants Investors pursuant to their Participation Agreements and the CCAA. In the interim, current and potential actions and other enforcement steps against the Applicants and their assets and property must be stayed so that the Applicants, Investors and KSV and the project consultants can conduct a thorough analysis of each of the Applicants' projects and focus on a restructuring plan that will preserve and maximize value for the Investors, or sales of project assets if that is the wish of the project's investors.

159. As a result of the complex nature and large scale of the Applicants' projects, any disruption will put at risk the significant value of the assets and the ongoing developments, and the immediate loss of the substantial investments in project soft costs that have been made. As set out above, a number of the projects are close to or have already obtained all necessary permits and re-zoning to commence construction and in certain instances, construction financing commitments have already been secured and construction would have commenced in the very near term, however, those financing commitments are presently in jeopardy. Disrupting the current process would result in significant delays, increased costs and, most importantly, significant losses being suffered by the Investors, if they determine that they wish to pursue the

completion of a particular project.

*c. Administration Charge*

160. It is contemplated that the Monitor, counsel to the Monitor, counsel to the Applicants and GT, in its capacity as the FSCO Trustee, but solely with respect to the Mortgage Administration Fee (as such terms are defined in the Initial Order), would be granted a Court-ordered charge on the assets, property and undertakings of each of the Applicants up to the maximum amount of \$500,000 (the "**Administration Charge**"), in the case of the Monitor, its counsel and counsel to the Applicants, with respect to their respective fees and disbursements, incurred at standard rates and charges, and, in the case of the SIM Trustee, as security for the SIM Trustee Fee. I am of the view that the Administration Charge is fair and reasonable in the circumstances.

161. The nature of the Applicants' business and operations and the contemplated CCAA proceedings, require the expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to complete a successful restructuring. The professionals that are to be beneficiaries of the Administration Charge have contributed, continue to contribute, and will contribute to what is intended to be a collaborative effort to protect the financial best interests of the Investors and to effect the Applicants' restructuring. I believe that the Administration Charge is necessary to ensure their participation.

*d. Directors' Charge*

162. To ensure the ongoing stability of the Applicants' business during the course of the CCAA proceedings, the Applicants require the continued participation of their officers and directors who oversee the management of the business. The directors and officers of the Applicants have considerable and valuable experience.

163. The Applicants' directors and officers have indicated that due to the potential for personal liability, they cannot continue serving the Applicants in that capacity unless the Initial

Order grants the Directors' Charge (as defined below) to secure the Applicants' indemnity obligations to their directors and officers post-filing.

164. The Applicants maintain directors and officers liability insurance (the "**D&O Insurance**"). The D&O Insurance policy issued in respect of Textbook 525, Textbook 555, Textbook 774 and Textbook Ross Park (which also includes Textbook 445) provides for a total of \$5 million in primary coverage. The D&O Insurance policy issued in respect of MC Oakville, MC Burlington, MC Kitchener, Legacy Lane and Scollard Development (which also includes McMurray Street) provides for a total of \$12 million in primary coverage. While the D&O Insurance is available, the Applicants' directors and officers cannot be certain that the policy providers will not seek to deny coverage on the basis that the D&O Insurance does not cover a particular claim or that coverage has been exhausted.

165. The proposed Initial Order contemplates the establishment of a charge in the amount of \$100,000 (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of the Applicants after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or willful misconduct.

166. The benefit of the Directors' Charge will only be available to the extent that any liability is not covered by the D&O Insurance.

167. The Applicants worked with the Monitor in determining the proposed quantum of the Directors' Charge and believe that the Directors' Charge is reasonable in the circumstances.

*e. DIP Loan and DIP Lender's Charge*

168. The Applicants, as borrowers, have entered into a DIP agreement (the "**DIP Agreement**") whereby interim funding will be made available to them (the "**DIP Facility**"). The lender under the DIP Agreement is Morrison Financial Mortgage Corporation (the "**DIP Lender**"). A copy of the DIP Agreement is attached hereto and marked as Exhibit "**H**".



169. On behalf of the Applicants, Thompson and I reached out to Kingsett and Vector to determine whether either party would be interested in providing the Applicants with DIP financing generally, or on the 445 Princess Project and the 774 Bronson Project, respectively, over which they already hold first-ranking mortgages. We also reached out to Centurion, which was prepared to provide construction financing on the Boathaus Project, to gauge its interest in providing DIP financing for that project. I understand that KSV had several discussions with Atrium Mortgage Corporation in respect of a possible DIP Credit facility for all of the Applicants. None of the parties ultimately stepped forward to provide the Applicants with the necessary DIP financing.

170. The Applicants require the DIP Facility to (i) fund their day-to-day operations while an analysis is undertaken by the Monitor and Investors of the Applicants' projects and until a determination is made by the Investors as to how they wish to proceed; (ii) retire one or more of the mortgages registered on title to the Applicants' properties; and (iii) fund the costs of the CCAA proceedings. The Cash Flow Forecast shows that approximately \$1.4 million of DIP financing may be required during the cash flow period. The DIP Lender is only willing to extend the DIP Facility if the Applicants' obligations under the DIP Agreement is secured by a court-ordered charge having the priority set out below (the "**DIP Lender's Charge**").

171. With respect to the DIP Lender's Charge, and in order to protect each separate group of Investors to the maximum extent possible, we have gotten the DIP Lender to agree that the Property of each Applicant shall be ring-fenced such that the DIP Charge shall only stand as security in respect of the Property of any one Applicant for those amounts actually funded from time to time from the DIP Facility on account of any take out financing, project specific costs and professional fees allocated to the specific Applicant's project in proportion to the project specific costs.

172. The proposed ranking of the court-ordered charges is as follows:

- (i) the Administration Charge to a maximum of \$100,000 per Applicant;

- (ii) DIP Lender's Charge; and
- (iii) the Directors' Charge to a maximum of \$10,000 per Applicant.

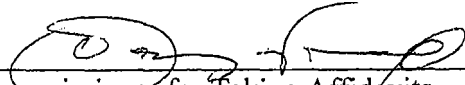
(such terms as defined in the Initial Order).


**X. CONCLUSION**

173. For the reasons set out herein, I believe it is just and equitable and in the best interests of the Investors and all stakeholders of the Applicants that the Initial Order be granted and that KSV be appointed as Monitor under the CCAA with enhanced powers in accordance with the form of Initial Order attached at Tab 3 of the Application Record.

174. This affidavit is sworn by me in support of the Applicants' application for the Initial Order under the CCAA and not for any other improper purpose.

Sworn before me at the City of Toronto, )  
in the Province of Ontario, this 6<sup>th</sup> day of )  
December, 2016 )

  
 Commissioner for Taking Affidavits )  
*Danny Nunes*

  
 \_\_\_\_\_  
**JOHN DAVIES**

# TAB 9

Request ID: 019837475  
 Transaction ID: 63372100  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/01/24  
 Time Report Produced: 14:33:22  
 Page: 1

# CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2218179	MCMURRAY STREET INVESTMENTS INC.	2009/09/18
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
		Amalgamation Ind.
2355 SKYMARK AVENUE		NOT APPLICABLE
		NOT APPLICABLE
Suite # 300		New Amal. Number
MISSISSAUGA		Notice Date
ONTARIO		NOT APPLICABLE
CANADA L4W 4Y6		NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address		Revival Date
		Continuation Date
51 CALDARI ROAD		NOT APPLICABLE
#A1M		NOT APPLICABLE
CONCORD		Transferred Out Date
ONTARIO		Cancel/Inactive Date
CANADA L4K 4G3		NOT APPLICABLE
		NOT APPLICABLE
		EP Licence Eff.Date
		EP Licence Term.Date
		NOT APPLICABLE
		NOT APPLICABLE
		Date Commenced in Ontario
		Date Ceased in Ontario
		NOT APPLICABLE
		NOT APPLICABLE
Activity Classification	Number of Directors Minimum      Maximum	
NOT AVAILABLE	00001      00015	

Request ID: 019837475  
Transaction ID: 63372100  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/01/24  
Time Report Produced: 14:33:22  
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## CORPORATION PROFILE REPORT

Ontario Corp Number

2218179

Corporation Name

MCMURRAY STREET INVESTMENTS INC.

Corporate Name History

MCMURRAY STREET INVESTMENTS INC.

Effective Date

2009/09/18

Current Business Name(s) Exist:

YES

Expired Business Name(s) Exist:

NO

Administrator:  
Name (Individual / Corporation)

DAVID  
ARSENAULT

Address

5186 DUNDAS STREET WEST  
  
TORONTO  
ONTARIO  
CANADA M9A 1C4

Date Began

2009/09/18

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

VICE-PRESIDENT

Resident Canadian

Request ID: 019837475  
Transaction ID: 63372100  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/01/24  
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Page: 3

## CORPORATION PROFILE REPORT

Ontario Corp Number

2218179

Corporation Name

MCMURRAY STREET INVESTMENTS INC.

Administrator:  
Name (Individual / Corporation)

JOHN  
E.  
DAVIES

Address

24 COUNTRY CLUB DRIVE

KING CITY  
ONTARIO  
CANADA L7B 1M5

Date Began

2009/09/18

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

JOHN  
E.  
DAVIES

Address

24 COUNTRY CLUB DRIVE

KING CITY  
ONTARIO  
CANADA L7B 1M5

Date Began

2009/09/18

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Request ID: 019837475  
Transaction ID: 63372100  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/01/24  
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## CORPORATION PROFILE REPORT

Ontario Corp Number

2218179

Corporation Name

MCMURRAY STREET INVESTMENTS INC.

Administrator:  
Name (Individual / Corporation)

GREGORY  
H.  
HARRIS

Address

95 LOCH ERNE LANE  
  
NOBLETON  
ALBERTA  
CANADA LOG 1N0

Date Began

2009/09/18

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Administrator:  
Name (Individual / Corporation)

GREGORY  
H.  
HARRIS

Address

95 LOCH ERNE LANE  
  
NOBLETON  
ALBERTA  
CANADA LOG 1N0

Date Began

2009/09/18

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Request ID: 019837475  
Transaction ID: 63372100  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/01/24  
Time Report Produced: 14:33:22  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2218179

MCMURRAY STREET INVESTMENTS INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA CHANGE NOTICE

1

2014/12/05 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE

The issuance of this report in electronic form is authorized by the Ministry of Government Services.



# TAB 10



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

28 McMurray Street, Bracebridge

LAND  
REGISTRY  
OFFICE #35

48115-0168 (LT)

PAGE 1 OF 5  
PREPARED FOR KConnell  
ON 2017/04/06 AT 08:10:17

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

**PROPERTY DESCRIPTION:** PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE ; THE DISTRICT MUNICIPALITY OF MUSKOKA

**PROPERTY REMARKS:** PLANNING ACT CONSENT AS IN DM140738. PLANNING ACT CONSENT IN DOCUMENT MT77728.

**ESTATE/QUALIFIER:**  
FEE SIMPLE  
LT CONVERSION QUALIFIED

**RECENTLY:**  
FIRST CONVERSION FROM BOOK

**FIN CREATION DATE:**  
2005/02/21

**OWNERS' NAMES**  
MCMURRAY STREET INVESTMENTS INC.

**CAPACITY SHARE**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2005/02/18 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2005/02/21 **						
35R3238	1974/01/09	PLAN REFERENCE				C
35R3266	1974/02/04	PLAN REFERENCE				C
DM140738	1978/10/24	TRANSFER	\$1		THE MUSKOKA BOARD OF EDUCATION	C
DM355416	2004/02/16	LR'S AMENDMENT				C
35R22861	2009/09/09	PLAN REFERENCE				C
MT72139	2009/09/16	APL CH NAME OWNER		THE MUSKOKA BOARD OF EDUCATION	TRILLIUM LAKELANDS DISTRICT SCHOOL BOARD	C
MT74064	2009/10/26	NOTICE		THE DISTRICT MUNICIPALITY OF MUSKOKA		C
MT77728	2010/01/15	TRANSFER	\$650,000	TRILLIUM LAKELANDS DISTRICT SCHOOL BOARD TRILLIUM LAKELANDS DISTRICT SCHOOL BOARD	MCMURRAY STREET INVESTMENTS INC.	C
MT105280	2011/11/10	CHARGE		*** COMPLETELY DELETED *** MCMURRAY STREET INVESTMENTS INC.	SINOCOIN CAPITAL INC.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
MT130532	2013/09/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** FOWLER CONSTRUCTION COMPANY LIMITED		
MT132335	2013/10/28	CHARGE		*** COMPLETELY DELETED *** MCMURRAY STREET INVESTMENTS INC.	2174217 ONTARIO INC.	
MT132342	2013/10/28	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** FOWLER CONSTRUCTION COMPANY LIMITED		
		REMARKS: MT130532.				
MT132343	2013/10/28	POSTPONEMENT		*** COMPLETELY DELETED *** 7743718 CANADA INC. B2B BANK OLYMPIA TRUST COMPANY	2174217 ONTARIO INC.	
		REMARKS: MT111700 TO MT132335				
MT132637	2013/11/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** CENTRAL ONTARIO MECHANICAL LTD.		
MT134398	2013/12/18	CERTIFICATE		*** COMPLETELY DELETED *** CENTRAL ONTARIO MECHANICAL LTD.	MCMURRAY STREET INVESTMENTS INC.	
		REMARKS: CERTIFICATE OF ACTION				
MT135135	2014/01/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2174217 ONTARIO INC.		
		REMARKS: MT132335.				
MT135136	2014/01/16	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** MCMURRAY STREET INVESTMENTS INC.		
		REMARKS: MT132637.				
MT135137	2014/01/16	CHARGE	\$2,000,000	MCMURRAY STREET INVESTMENTS INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
MT135138	2014/01/16	NO ASSGN RENT GEN		MCMURRAY STREET INVESTMENTS INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: MT135137.				
MT135139	2014/01/16	POSTPONEMENT		7743718 CANADA INC. OLYMPIA TRUST COMPANY B2B BANK	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: MT111700 TO MT135137				
MT138601	2014/05/15	TRANSFER OF CHARGE		B2B TRUST	OLYMPIA TRUST COMPANY	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

28 McMurray Street, Bracebridge

LAND  
REGISTRY  
OFFICE #35

48115-0168 (LT)

PAGE 5 OF 5  
PREPARED FOR KConnell  
ON 2017/04/06 AT 08:10:17

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY 7743718 CANADA INC.		
MT175835	2016/11/03	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	GRANT THORNTON LIMITED	C
		REMARKS: MT138601 TO MT146380				
		REMARKS: MT124116 AND MT111700				

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #35

48115-0429 (LT)

PAGE 1 OF 4  
PREPARED FOR KConnell  
ON 2017/04/06 AT 08:16:51

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

**PROPERTY DESCRIPTION:** PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 & 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE, PT LT 1, CON 2 MACAULAY PT 1 35R-22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3 BRACEBRIDGE PT 2 35R-22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R-22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194; TOWN OF BRACEBRIDGE

**PROPERTY REMARKS:** PLANNING ACT CONSENT IN DOCUMENT MT77728.

**ESTATE/QUALIFIER:**

FEE SIMPLE  
ABSOLUTE

**RECENTLY:**

DIVISION FROM 48115-0428

**PIN CREATION DATE:**

2010/03/03

**OWNERS' NAMES**

MCMURRAY STREET INVESTMENTS INC.

**CAPACITY SHARE**

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2010/03/03 **</b>						
LT177700	1993/09/15	NOTICE			THE CORPORATION OF THE TOWN OF BRACEBRIDGE	C
35R22861	2009/09/09	PLAN REFERENCE				C
MT74064	2009/10/26	NOTICE		THE DISTRICT MUNICIPALITY OF MUSKOKA		C
MT77728	2010/01/15	TRANSFER	\$650,000	TRILLIUM LAKELANDS DISTRICT SCHOOL BOARD TRILLIUM LAKELANDS DISTRICT SCHOOL BOARD	MCMURRAY STREET INVESTMENTS INC.	C
MT105280	2011/11/10	CHARGE		*** COMPLETELY DELETED *** MCMURRAY STREET INVESTMENTS INC.	SINOCOIN CAPITAL INC.	
MT111700	2012/05/03	CHARGE	\$3,500,000	MCMURRAY STREET INVESTMENTS INC.	7743718 CANADA INC.	C
MT111736	2012/05/03	DISCH OF CHARGE		*** COMPLETELY DELETED *** SINOCOIN CAPITAL INC.		
<b>REMARKS: MT105280.</b>						
MT113813	2012/06/22	TRANSFER OF CHARGE		7743718 CANADA INC.	B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
					B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST B2B TRUST 7743718 CANADA INC. B2B BANK B2B BANK B2B BANK	
		REMARKS: MT111700.				
MT117838	2012/09/27	TRANSFER OF CHARGE		7743718 CANADA INC.	7743718 CANADA INC. OLYMPIA TRUST COMPANY OLYMPIA TRUST COMPANY	C
		REMARKS: MT111700				
MT128112	2013/07/16	TRANSFER OF CHARGE		B2B BANK	7743718 CANADA INC.	C
		REMARKS: MT111700				
MT130532	2013/09/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** FOWLER CONSTRUCTION COMPANY LIMITED		
MT132335	2013/10/28	CHARGE		*** COMPLETELY DELETED *** MCMURRAY STREET INVESTMENTS INC.	2174217 ONTARIO INC.	
MT132342	2013/10/28	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** FOWLER CONSTRUCTION COMPANY LIMITED		
		REMARKS: MT130532.				
MT132343	2013/10/28	POSTPONEMENT		*** COMPLETELY DELETED *** 7743718 CANADA INC. B2B BANK OLYMPIA TRUST COMPANY	2174217 ONTARIO INC.	
		REMARKS: MT111700 TO MT132335				
MT132637	2013/11/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** CENTRAL ONTARIO MECHANICAL LTD.		

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# TAB 11

**Properties**

**PIN** 48115 - 0429 **LT** *Interest/Estate* Fee Simple  
**Description** PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 & 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE, PT LT 1, CON 2 MACAULAY PT 1 35R-22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3 BRACEBRIDGE PT 2 35R-22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R-22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194; TOWN OF BRACEBRIDGE  
**Address** 28 MURRAY STREET  
 BRACEBRIDGE

**PIN** 48115 - 0168 **LT** *Interest/Estate* Fee Simple  
**Description** PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE ; THE DISTRICT MUNICIPALITY OF MUSKOKA  
**Address** 28 MCMURRAY STREET  
 BRACEBRIDGE

**Chargor(s)**

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

**Name** MCMURRAY STREET INVESTMENTS INC.  
**Address for Service** c/o Harris + Harris LLP, Barristers and Solicitors, 2355 Skymark Avenue, Suite 300, Mississauga, Ontario L4W 4Y6

I, John E. Davies, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

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

**Name** COMPUTERSHARE TRUST COMPANY OF CANADA  
**Address for Service** as custodian for Frontenac Mortgage Investment Corporation  
 c/o Pillar Financial Services Inc., 14216 Road 38, P.O. Box 208, Sharbot Lake, Ontario K0H 2P0

**Provisions**

**Principal** \$2,000,000.00 **Currency** CDN  
**Calculation Period** monthly  
**Balance Due Date** 2016/01/16  
**Interest Rate** 12.0%  
**Payments** \$20,000.00  
**Interest Adjustment Date** 2014 01 16  
**Payment Date** 16th day of each and every month  
**First Payment Date** 2014 02 16  
**Last Payment Date** 2016 01 16  
**Standard Charge Terms** 200033  
**Insurance Amount** full insurable value  
**Guarantor**

**Additional Provisions**

See Schedules

**Signed By**

Christina Marie Albers

160 Elgin Street, Suite 2600  
Ottawa  
K1P 1C3acting for Chargor Signed 2014 01 16  
(s)

Tel 613-233-1781

**Signed By**

Fax 613-563-9869

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

**Submitted By**

GLH LIMITED PARTNERSHIP (A.K.A. GOWLINGS) 160 Elgin Street, Suite 2600 2014 01 16  
Ottawa  
K1P 1C3

Tel 613-233-1781

Fax 613-563-9869

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Chargee Client File Number : 02387794

## Schedule of Additional Provisions

### 1. Definitions

In this Schedule and in the Charge, the following words shall have the following meanings:

**"Additional Covenantor"** or **"Additional Covenantors"** means any covenantor or additional covenantor required by the Commitment Letter.

**"Applicable Laws"** means, in respect of any person, property, transaction or event, all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations, approvals and all applicable common law or equitable principles in force and effect during the currency of this Charge;

**"Business Day"** means a day of the week, other than Saturday, Sunday or any other day which is a statutory or a municipal holiday in the municipality in which the Land is situate.

**"Commitment Letter"** means the commitment letter dated December 2, 2013 between the Chargor, the Additional Covenantor, and Frontenac Mortgage Investment Corporation on behalf of the Chargee (as the same may be amended, supplemented, modified, varied, extended, renewed or replaced at any time and from time to time) including any letter or other confirmation issued by the Chargee confirming the actual interest rate payable by the Chargor on the indebtedness secured by the Charge;

**"Environmental Audit"** has the meaning given to it in Section 22 of this Schedule.

**"Environmental Claims"** has the meaning given to it in Section 24 of this Schedule.

**"Environmental Laws"** means all present and future Applicable Laws, standards and requirements relating to environmental or occupational health and safety matters, including those relating to the presence, release, reporting, licensing, permitting, investigation, disposal, storage, use, remediation and clean-up or any other aspect of a Hazardous Substance;

**"Environmental Proceeding"** means any investigation, action, proceeding, conviction, fine, judgement, notice, order, claim, directive, permit, license, approval, agreement or lien of any nature or kind arising under or relating to Environmental Laws;

**"Hazardous Substance"** means any substance or material that is prohibited, controlled, otherwise regulated by any governmental authority or is otherwise hazardous in fact, including without limitation contaminants, pollutants, asbestos, lead, urea formaldehyde foam insulation, polychlorinated by-phenyls or hydrocarbon products, any materials containing same or derivatives thereof, explosives, radioactive substances, petroleum and associated products, underground storage tanks, dangerous or toxic substances or materials, controlled products, and hazardous wastes.

**"Land"** or **"Lands"** means the lands described in the electronic form of Charge/Mortgage to which this Schedule is attached;

**"Loan"** means the loan made by the Chargee to the Chargor pursuant to the Commitment Letter and the Security;

**"PCTF Act"** means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

**"Project"** means the Lands and all improvements now or hereafter constructed on or made to the Lands.

**"Publicly Traded Entity"** means an entity whose shares/units are listed and traded on a recognized stock exchange in Canada or the United States of America.

“**Security**” means the Charge and all other security collateral to the Charge for the obligations of the Chargor under the Commitment Letter and the Charge;

“**Standard Charge Terms**” means Standard Charge Terms No. 200033. Where not otherwise defined herein, capitalized terms shall have the meaning given to them in the Standard Charge Terms;

2. Interpretation

- (i) The headings of all provisions herein are inserted as a matter of convenience only and not to define the intent of this Schedule. The necessary changes in grammar and gender required to apply to the parties hereto shall be assumed as though expressed.
- (ii) If there is more than one Chargor or Additional Covenantor, each of the covenants, agreements and obligations herein shall, as between and among each Chargor and each Additional Covenantor, be deemed to be joint and several, except as may otherwise herein specifically be provided, and the term “Chargor” shall be read as if each Chargor were specifically named and the term “Additional Covenantor” shall be read as if each Additional Covenantor were specifically named and any default by any one Chargor shall be deemed to be a default by each Chargor and any default by any one Additional Covenantor shall be deemed to be a default by each Additional Covenantor.
- (iii) “**Person**” includes any individual, partnership, joint venture, trust, unincorporated organization or any other association, corporation and government or any department or agency thereof.

3. Repayment

The Chargor agrees to make monthly interest payments to the Chargee in the manner provided for in the Commitment Letter.

4. Prepayment

Provided the Loan is not in default, prepayment in part or in full, of the principal amount under the Charge and interest accrued thereon, is allowed at any time without penalty.

5. Insurance Requirements

Paragraph 16 of the Standard Charge Terms is hereby deleted and replaced with the following:

“The Chargor will, at all times during the term of this Charge, maintain the insurance required by the Charge including, without limitation the following coverages:

- (a) all risks of direct physical loss or damage, including, without limitation, coverage for the foundations of all improvements and flood and earthquake coverage, all on a replacement cost basis with loss payable to the Chargee under an Insurance Bureau of Canada mortgage clause; the policy should allow for the improvements on the Land to be completed (if applicable), for partial occupancy, and for the Land to be vacant and unoccupied for a period of at least 30 days;
- (b) comprehensive broad form boiler and machinery insurance covering all pressure vessels (whether fired or unfired), air conditioning and miscellaneous electrical apparatus on the Land, for an amount satisfactory to the Chargee, all on a replacement cost basis, with loss payable to the Chargee under a Boiler and Machinery Insurance Association mortgage clause;
- (c) business interruption or rental income loss coverage on a gross profits or rentals form sufficient to cover 100% of the loss of rent or loss of business



income from the business conducted on the Land for a period of not less than twelve (12) months, based on the greater of actual or projected revenue, in respect of all perils described in (a) and (b) above; and

- (d) comprehensive general liability insurance, inclusive of bodily injury, death or property damage or loss, for a minimum amount of \$5,000,000 per occurrence or such other amount as the Chargee may reasonably request.

The coverage required by sections (a) and (b) above shall include by-law endorsements acceptable to the Chargee, including but not limited to same site waiver, increased cost of construction, undamaged portion coverage and demolition and debris coverage.

No policies shall contain any co-insurance clauses less than 90%. All such insurance shall be placed with a company or companies satisfactory to the Chargee. Deductible amounts shall also be subject to Chargee's approval. All cancellation and alteration clauses in the above-referenced policies, including those obtained in the mortgage clause endorsements, shall provide for at least thirty (30) days prior written notice to the Chargee of any cancellation of or material alteration to the policy. The Chargor shall provide evidence of policy renewal or satisfactory replacement annually at least thirty (30) days prior to expiry. The Chargor shall deliver to the Chargee original or certified copies of all policies required hereunder. At the time of the advance of funds under this Charge, the expiry date of each of the insurance policies required hereunder shall be at least one year from the date of funding. The Chargee shall be entitled to require coverage of such other risks and perils as the Chargee may from time to time consider advisable or desirable and in respect of which insurance coverage is available."

6. Due on Sale, Change of Control, etc.

If:

- (a) the Chargor directly or indirectly sells, conveys, transfers, assigns or otherwise disposes of its interest in the Land or any part thereof or agrees to do so;
- (b) the Chargor or any Additional Covenantor issues, sells or permits the assignment or transfer by any means of all or any part of its shares or other ownership interests resulting in a change in the control of the Chargor or Additional Covenantor, as the case may be, or if the Chargor or any Additional Covenantor amalgamates or merges with another entity;
- (c) there is a material adverse change in the financial condition, operation, status or business of the Chargor or any Additional Covenantor or the Lands;
- (d) the Chargor or any Additional Covenantor defaults in the payment or performance of any obligation, and the aggregate amount of obligations to which such defaults relate exceeds \$1,000,000;

without the prior written consent of the Chargee being obtained, then the Chargee may, at its option, declare forthwith due and payable the entire balance of the unpaid principal together with accrued and unpaid interest due thereon and any other amounts payable under this Charge. The decision to accelerate the Loan shall be at the sole option of the Chargee. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

The Chargor will provide reasonable notice to the Chargee of any anticipated or impending transaction which would require the consent of the Chargee under this Section together with such reasonable information as the Chargee may require to determine whether or not to grant its consent thereto.

7. Financial Information and Reporting

Until the repayment of this mortgage, the Chargor shall provide to the Chargee, within 120 days after the end of each fiscal year, or within 120 days after the end of each calendar year, if applicable or if the Chargor is an individual, or more often if requested by the Chargee, detailed consolidated financial statements including a separate income and expense statement for the real estate, and an operating statement at a minimum prepared on a "review engagement" basis, together with an updated rent roll containing relevant lease terms for the real estate, all satisfactory to the Chargee in form and content.

The Chargor will further cause each Additional Covenantor to provide, in the case of corporate Additional Covenantors, unaudited financial statements within 120 days after the end of each fiscal year of such corporate Additional Covenantor, or more often if requested by the Chargee, and, in the case of each individual Additional Covenantor, a personal net worth statement within 120 days after the end of each calendar year, or more often if requested by the Chargee, such statements to be in form and content satisfactory to the Chargee and on, at a minimum, a "review engagement" basis.

The Chargor also authorizes and shall, if required by the Chargee, cause each Additional Covenantor to authorize the Chargee, to obtain such financial information as they may require.

The Chargor shall provide evidence to the Chargee of payment of all property taxes when due and payable for the Lands and in any event within 120 days after the end of each of its fiscal years.

8. No Further Encumbrances

The Chargor shall not, without the Chargee's prior written approval, further charge or otherwise encumber the Land or any interest therein.

9. Appointment of a Receiver

IT IS DECLARED and agreed that at any time and from time to time when there shall be default under the provisions of this Charge, the Chargee may at such time and from time to time and with or without entering into possession of the Land appoint in writing a receiver, or a receiver and manager, or a receiver-manager, or a trustee (the "**Receiver**") of the Land, or any part thereof, and of the rents and profits thereof, if any, and with or without security and may from time to time by similar writing remove any such receiver and appoint another in its place and stead, and in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby irrevocably agrees and consents to the appointment of such receiver of the Chargee's choice and without limitation whether pursuant to this Charge, the *Mortgages Act*, the *Construction Lien Act*, or pursuant to the *Trustees Act* (as the Chargee may at its sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Land or any part thereof and the Chargor hereby consents to a Court Order for the appointment of such receiver, if the Chargee in its discretion chooses to obtain such order, and on such terms and for such purposes as the Chargee in its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the Land and/or complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the receiver or the Chargor, and if required by the Chargee, in priority to any existing encumbrances affecting the Land, including without limitation, charges and construction lien claims.

UPON the appointment of any such Receiver from time to time the following provisions shall apply:

- (a) A statutory declaration of the Chargee or an officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;

- (b) Every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect to the Land, or any part thereof, whether in respect of any tenancies created in priority to this Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
- (c) The Chargee may from time to time fix the remuneration of every such Receiver which shall be a charge on the Land, and may be paid out of the income therefrom or the proceeds of sale thereof;
- (d) The appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a Chargee in possession in respect of the Land or any part thereof;
- (e) The Receiver shall have the power to rent any portion of the Land for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any lease of the Land or any part thereof in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm, and hereby ratifies and confirms whatever acts such Receiver may do on the Land;
- (f) In all instances, the Receiver shall be acting as the attorney or agent of the Chargor;
- (g) Every such Receiver shall have full power to complete any unfinished construction upon the Land;
- (h) Such Receiver shall have full power to manage, operate, repair, or alter the Land or any part thereof in the name of the Chargor;
- (i) The Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the Lands including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges which may be registered against the Lands from time to time, whether or not such charges are prior to the interest of the Chargee in the Land; sale of the Land; borrowing money on the security of the Land; applying for and executing all documents in any way related to any zoning applications, severance of Lands pursuant to the provisions of the *Planning Act*, as amended, subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the Lands, including grants of Lands or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent governmental authority, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the Lands as a condominium; completing any application for first registration pursuant to the provisions of the *Land Titles Act* of Ontario or pursuant to the *Certification of Titles Act* of Ontario; and for all and every of the purposes aforesaid the Chargor does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Land, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Land, as fully and effectually to all intents and purposes as the Chargor could do if personally present and acting therein;
- (j) The Receiver shall not be liable for any loss howsoever arising and the Receiver shall not be liable to the Chargor to account for monies received

other than cash received by it in respect to the Land or any part thereof and out of such cash so received, every such Receiver shall pay in the following order:

- (i) its remuneration;
- (ii) all payments made or incurred by it in the exercise of its powers hereunder;
- (iii) any payment of interest, principal and other money which may from time to time be or become charged upon the Land in priority to the monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Land or any part thereof.

THE CHARGOR hereby irrevocably appoints the Chargee as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Chargee and/or its solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargee and/or the Receiver and/or with respect to the Land in the same manner as if such documentation was duly executed by the Chargor itself.

#### 10. Events of Default

Without limiting any of the provisions of this Charge, each of the following events (with notice and time to cure where applicable) shall be considered events of default hereunder (each an "Event of Default" and collectively, "Events of Default") upon the happening of which the whole of the principal sum outstanding, all interest accruing thereon and any other amounts owing hereunder, at the Chargee's option, immediately become due and payable:

- (a) Failure of the Chargor to pay any installment of principal, interest and/or taxes under this Charge, on the date upon which any of the payments for same become due.
- (b) Failure of the Chargor or any of the Additional Covenantors to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application for this Charge or the Commitment Letter, the provisions of this Charge, or any other document giving contractual relationship as between the Chargor, or any of the Additional Covenantors, and Chargee, or if it is found at any time that any representation to the Chargee with respect to the loan secured by this Charge or in any way related thereto is materially incorrect or misleading.
- (c) The registration of any construction lien against the Land which is not discharged within a period of twenty (20) days after the date of registration thereof, or the filing of a writ of execution in the hands of the sheriff in the judicial district where the Land are situate.
- (d) The Land is abandoned, any act of waste is committed as to all or any part of the Land, or any building or other structure now or later being erected on the Land remains unfinished and without any work being done on it for a period of ten consecutive days.
- (e) Any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Chargor or any of the Additional Covenantors (if the Chargor/Additional Covenantor is a corporation), or there is a dissolution of the Chargor or any of the Additional Covenantors (if the Chargor/Additional Covenantor is a partnership).
- (f) If the Chargor or any Additional Covenantor commits an act of bankruptcy, or becomes bankrupt or insolvent, or admits in writing its inability to pay its debts as they mature, or if the Chargor or any Additional Covenantor makes an assignment

for the benefit of creditors; or if the Chargor or any Additional Covenantor shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property; or a receiver, trustee or similar officer shall be appointed, whether by court or by extra-judicial means, without the application or consent of the Chargor or Additional Covenantor; or if such Chargor or Additional Covenantor shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings (including the making of a proposal) relating to it under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* or other legislation of Canada respecting bankruptcy or insolvency or under the law of any other jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Chargor or Additional Covenantor and the Chargor or Additional Covenantor is not diligently defending.

- (g) Another encumbrancer takes possession of all or any part of the Land or a distress or execution or other similar process is brought against the Land or any such part.
- (h) All or any material part of the Land is expropriated.
- (i) If a receiver is appointed over any of the Chargor's or any Additional Covenantor's assets or undertaking of any judgment or order or any process of any court becomes enforceable against the Chargor or any Additional Covenantor or any of their respective assets or any creditor takes possession of any of their respective assets.
- (j) If any representation or warranty set forth herein is incorrect in any material respect.

Upon the occurrence of an Event of Default (with the exception of an Event of Default in paragraphs (e), (f), (g) and (i) above for which no such notice shall be required), the Chargee will give notice of such event to the Chargor. The Chargor will be entitled to five (5) Business Days from the date of the notice to cure any default relating to the payment of money due under the Charge and, except or otherwise provided, ten (10) Business Days from the date of the notice to cure any other default (with the exception of an Event of Default in paragraphs (e),(f),(g), and (i) above for which no such notice shall be required) (the "Cure Periods"). During the Cure Periods, the Chargee will not exercise any of its rights or remedies under this Charge. The Chargor shall commence and proceed continuously and diligently to cure such default after receipt of written notice from the Chargee. Notice shall be effected on the Chargor by delivering a written statement of the Event of Default(s) to the Chargor at the address for service in this Charge.

Delay in the exercise of the Chargee's right to declare the Chargor in default and to declare the amounts secured under this Charge to be immediately due and payable shall not be construed as a waiver of such right. Any failure of the Chargee to exercise its right shall not be construed as a waiver of its right in respect of any subsequent event, whether or not of a similar nature."

#### 11. Communications

All communications provided for hereunder shall be in writing, personally delivered, sent by prepaid first class mail or sent by electronic transmission, and if to the Chargee addressed to the address for service provided on the electronic form of Charge/Mortgage to which this schedule is attached to the attention of the Manager, Mortgage Investments and if to the Chargor to the address for service provided on the electronic form of Charge/Mortgage to which this schedule is attached. The date of receipt of any such communication shall be deemed to be the date of delivery, if delivered as aforesaid, or the third Business Day following the date of mailing, if mailed, as aforesaid. If sent by electronic transmission before 4:00 pm on any Business Day, such communication shall be deemed to have been received on the date sent; if sent after 4:00 pm on any Business Day or if sent on a day which is not a Business Day, such communication shall be

deemed to have been received on the next following Business Day. Any party hereto may change its address for service from time to time by notice in the manner herein provided. In the event of a postal disruption or an anticipated postal disruption, prepaid first class mail will not be an acceptable means of communication. Notwithstanding the provisions of this paragraph, any notices to be sent by the Chargee to the Chargor under the *Mortgages Act* of Ontario or any other statute shall be sent as required by such statute and the date of receipt shall be the date that such statute deems the Chargor to have received the notice in question.

12. Representation and Warranty

The Chargor and each Additional Covenantor, if any, represent and warrant to the Chargee that all information and material submitted and all representations made to the Chargee by the Chargor and/or any Additional Covenantor are true, complete and accurate and each of the foregoing parties acknowledges that the Chargee has relied on such information, material and representations in approving the Loan. Any breach of this representation and warranty shall constitute a default under the Security which shall entitle the Chargee to exercise all its rights and remedies for default in payment thereunder.

13. Liens

On each disbursement date, there shall have been full and complete compliance with all requirements of the applicable construction, mechanics' or builders' lien legislation and the Chargor shall submit to the Chargee, in form and substance satisfactory to the Chargee, evidence of such compliance. The Chargee may retain from any disbursement such amounts as it considers advisable to protect its interest from subordination under such legislation. The Chargor shall provide additional security, information and documentation as may be required by the Chargee to preserve and ensure in all respects the absolute first priority of the Charge over any rights of any existing or potential lien claimants.

The Chargor and any Additional Covenantor shall jointly and severally indemnify, defend and hold harmless the Chargee from and against all claims, legal proceedings, demands, losses, damages, and costs, which the Chargee may suffer or incur arising out of or in connection with any failure of the Chargor to observe and perform its obligations under the applicable legislation with respect to any such lien.

14. Credit Investigations

The Chargor and each Additional Covenantor hereby consent to the Chargee obtaining from any credit reporting agency or from any person such information as the Chargee may require at any time, and consent to disclosure at any time of any information concerning the Chargor and each Additional Covenantor to any credit grantor with whom the Chargor and any Additional Covenantor has financial relations or to any direct reporting agency.

15. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Pursuant to the PCTF Act, the Chargee is required to obtain specific information with respect to the Chargor and the Additional Covenantors and any third party involved in the transaction, including identification for each of those parties. In addition, where the Chargor is using the proceeds of the Loan to acquire the Land, the PCTF Act requires the Chargee to obtain information with respect to the source of funds used in connection with the Chargor's equity in the Land. The Chargor and each Additional Covenantor hereby covenant and agree to provide, forthwith upon request for the same, such identification and information as may be required to ensure the Chargee's compliance with the PCTF Act.

16. Additional Covenantors

The Additional Covenantors hereby acknowledge and agree that each of them is jointly and severally liable for all covenants and obligations of the Chargor under the Commitment Letter and with respect to the Loan.

17. Non-Merger of Commitment Letter

Neither the execution and delivery of any of the Security nor the advance of the Loan shall in any way merge or extinguish the Commitment Letter or the terms and conditions thereof which shall continue in full force and effect until the Loan has been repaid in full. In the event of any inconsistency or conflict between any provision or provisions of the Commitment Letter and any provision or provisions of the Security including this Charge, the provision or provisions of the Commitment Letter shall prevail. A provision or provisions contained in the Security which is not contained in the Commitment Letter shall not be considered to be inconsistent or in conflict with the Commitment Letter.

18. No Agency

The Chargor acknowledges that the Chargee may assign the Commitment Letter to a third party and if it does so may receive a fee or commission in connection with such assignment. The Chargee may also receive a fee in connection with the servicing of this Loan. The Chargee is not acting as the Chargor's agent or otherwise in any fiduciary capacity in relation to the Chargor in connection with this Loan.

19. Assignment

Neither the Commitment Letter nor any of the Loan proceeds may be assigned by the Chargor without the Chargee's prior written consent which can be unreasonably withheld. The Commitment Letter and the Security may be assigned in whole or in part by the Chargee at any time before or after the advance.

20. Approvals and Consents

Any approvals or consents required to be made or given by the Chargee hereunder must be expressly given pursuant hereto and shall not be implied or construed by the delivery or receipt of documents.

21. Waiver

Any waiver by the Chargee of any default by the Chargor or any omission on the Chargee's part in respect of any default by the Chargor, shall not extend or be taken in any manner whatever to affect any subsequent default by the Chargor or the rights resulting from it. The Chargee may waive any condition precedent to funding but the waiver shall not prejudice any subsequent enforcement of such condition.

22. Representations Regarding Environmental Matters

The Chargor represents and warrants to the Chargee that: (i) the Land and all businesses and operations conducted thereon comply with all Environmental Laws; (ii) the Land has not been used for or designated as a waste disposal site and, except as disclosed in the environmental audit obtained by the Chargee prior to the advance of funds under this Charge (the "**Environmental Audit**"), contains no Hazardous Substances and there is no existing or threatened Environmental Proceeding against or affecting the Land; (iii) copies of all existing environmental assessments, audits, tests and reports relating to the Land have been delivered to the Chargee; (iv) to the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or to any Environmental Proceedings which would render illegal or materially restrict or change the present use and operation of the Land; (v) except as disclosed in the Environmental Audit, neither the Chargor nor, to the best of the Chargor's knowledge and belief after due inquiry and investigation, any other person or organization: (i) has used or permitted the use of the Land to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances; (ii) has been subject to any Environmental Proceeding related to the Land; (iii) has caused or permitted the release or discharge of any Hazardous Substance on or in the vicinity of the Land; (iv) has received

or otherwise has knowledge of any Environmental Proceedings or of any facts which could give rise to any Environmental Proceeding related to the Land; (v) has undertaken any remediation or clean-up of any Hazardous Substance on or in the vicinity of the Land; or (vi) has defaulted in reporting any occurrence or circumstance to any governmental authority in relation to the Land which is or was required to be reported pursuant to any Environmental Laws.

23. Covenants Regarding Environmental Matters

The Chargor shall: (i) ensure that the Land and the Chargor comply with all Environmental Laws at all times; (ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Land (except in the ordinary course of business of the Chargor or any tenant and in compliance with all Environmental Laws) nor permit any other activity on or in respect of the Land that might result in any Environmental Proceeding affecting the Land, Chargor or Chargee; (iii) notify the Chargee promptly of any threatened or actual Environmental Proceedings; (iv) remediate and cure in a timely manner any non-compliance by the Land or the Chargor with Environmental Laws, including removal of any Hazardous Substances from the Land; (v) maintain all environmental and operating documents and records including all permits, licenses, certificates, approvals, orders and agreements relating to the Land as required by Environmental Laws; (vi) provide the Chargee promptly upon request with such information, documents, records, permits, licences, certificates, approvals, orders, agreements, environmental audits, reports, assessments and inspections and take such other steps (all at the Chargor's expense) as may be required by the Chargee to confirm and/or ensure compliance by the Land and the Chargor with Environmental Laws, and (vii) execute all consents, authorizations and directions necessary to permit any inspection of the Land by any governmental authority and to permit the release to the Chargee or its representatives, of any information relating to the Land and the Chargor.

24. Environmental Indemnity

Without limiting any other provision of this Charge or any document collateral hereto, the Chargor shall indemnify and pay, protect, defend and save the Chargee harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs, expenses, (including legal fees and disbursements on a solicitor and his own client basis) (collectively "**Environmental Claims**"), imposed on, made against or incurred by the Chargee arising from or relating to, directly or indirectly, and whether or not disclosed by the Environmental Audit and whether or not caused by the Chargor or within its control, (i) any actual or alleged breach of Environmental Laws relating to or affecting the Land, (ii) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Land or surrounding lands, including any personal injury or property damage arising therefrom, (iii) any actual or threatened Environmental Proceeding affecting the Land including any settlement thereof, (iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Land or surrounding areas or otherwise complying with Environmental Laws, or (v) any breach by the Chargor of any covenant hereunder or under any document collateral hereto or under Applicable Law relating to environmental matters. This indemnity shall survive repayment of the Loan, foreclosure upon this Charge and any other extinguishing of the obligations of the Chargor under this Charge and any other exercise by the Chargee of any remedies available to it against the Chargor.

25. Separate Bank Account

In the event of a default under the Charge or if the Chargor seeks protection under the *Companies Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act (Canada)* or any other legislation relating to insolvent debtors, the Chargor shall establish a separate project bank account for the Land into which all revenue from the Land shall be deposited and from which all operating expenses in respect of the Land shall be paid.

26. Obligations



If the Chargor fails to perform any of their obligations as provided under this Charge, the Chargee may, but shall not be obligated, to perform any of the obligations required to be performed by the Chargor, at the Chargor's sole cost and expense and such obligations shall be added to the obligations outstanding under this Charge.

27. Compliance with Construction Lien Act

In the event of any order or judgment (whether such order or judgment be on consent or otherwise) whereby any holdback deficiency, or any part thereof, under the *Construction Lien Act*, and any amendments thereto, is ordered, adjudged, or declared, to have priority over the Charge, the Chargee may, but without any obligation whatsoever so to do, pay such amount of the holdback deficiency which has priority over the Charge, and all costs, legal fees and expenses whatsoever (on a solicitor and client basis) pertaining to such payment, and the amount so paid by the Chargee, including all costs, legal fees and expenses pertaining to such payment of the holdback deficiency shall be a charge against the Lands, and the amount so paid including the said costs, legal fees and expenses, shall be added to the principal amount of the Charge and interest shall be charged on such amount so paid at the interest rate chargeable herein, as amended from time to time, from the date of such payment; provided further, that upon payment of the amount mentioned in this paragraph, all monies owing under the Charge shall immediately become fully due and payable, and the Chargee shall have the privilege of immediately exercising all of its remedies as contained in the Charge and under the *Mortgages Act*.

The Chargor and any Additional Covenantor shall jointly and severally indemnify, defend and hold harmless the Chargee from and against all claims, legal proceedings, demands, losses, damages, and costs, which the Chargee may suffer or incur arising out of or in connection with any failure of the Chargor to observe and perform its obligations under the applicable legislation with respect to any such order or judgment.



**Properties**

**PIN** 48115 - 0429 LT  
**Description** PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 & 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE, PT LT 1, CON 2 MACAULAY PT 1 35R-22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3 BRACEBRIDGE PT 2 35R-22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R-22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194; TOWN OF BRACEBRIDGE  
**Address** 28 MCMURRAY STREET  
BRACEBRIDGE  
**PIN** 48115 - 0168 LT  
**Description** PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE ; THE DISTRICT MUNICIPALITY OF MUSKOKA  
**Address** 28 MCMURRAY STREET  
BRACEBRIDGE

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

**Name** MCMURRAY STREET INVESTMENTS INC.  
**Address for Service** c/o Harris + Harris LLP, Barristers and Solicitors, 2355 Skymark Avenue, Suite 300, Mississauga, Ontario L4W 4Y6

I, John E. Davies, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Party To(s)** **Capacity** **Share**

**Name** COMPUTERSHARE TRUST COMPANY OF CANADA  
**Address for Service** as custodian for Frontenac Mortgage Investment Corporation  
c/o Pillar Financial Services Inc., 14216 Road 38, P.O. Box 208, Sharbot Lake, Ontario K0H 2P0

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.  
This notice may be deleted by the Land Registrar when the registered instrument, MT135137 registered on 2014/01/16 to which this notice relates is deleted  
Schedule: See Schedules

**Signed By**

Christina Marie Albers 160 Elgin Street, Suite 2600 acting for Signed 2014 01 16  
Ottawa Applicant(s)  
K1P 1C3  
Tel 613-233-1781  
Fax 613-563-9869  
I have the authority to sign and register the document on behalf of all parties to the document.  
Christina Marie Albers 160 Elgin Street, Suite 2600 acting for Party To Signed 2014 01 16  
Ottawa (s)  
K1P 1C3  
Tel 613-233-1781  
Fax 613-563-9869  
I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

GLH LIMITED PARTNERSHIP (A.K.A. GOWLINGS) 160 Elgin Street, Suite 2600 2014 01 16  
Ottawa  
K1P 1C3

Tel 613-233-1781  
Fax 613-563-9869

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00  
Total Paid \$60.00

**File Number**

Party To Client File Number : 02387794

Schedule - General Assignment of Rents

BETWEEN:

**McMurray Street Investments Inc.**

(hereinafter called the "Assignor")

OF THE FIRST PART

AND:

**Computershare Trust Company of Canada  
as custodian for Frontenac Mortgage Investment Corporation**

(hereinafter called the "Assignee")

OF THE SECOND PART

WHEREAS by a charge (the "Charge") registered in the Land Registry Office for the Land Titles Division of Muskoka (No. 35) under the instrument number referred to in the notice of assignment of rents – general to which this assignment is attached, the Assignor did grant and charge to the Assignee all of the Assignor's interest in those lands more particularly described in **Schedule "A"** annexed hereto and the buildings and improvements now or hereafter standing in or upon, belonging or in any way appertaining to the said lands (all hereinafter collectively referred to as the "**Land or Lands**"); and

WHEREAS it was agreed as a condition of the making of the loan secured by the aforesaid Charge that the Assignor should assign to the Assignee all existing and future leases and any and all rents and other monies now due and payable or benefits to become due and payable pursuant to certain leases of the Lands.

NOW THEREFORE IN CONSIDERATION OF the making of the loan and of the premises the Assignor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, as collateral security for the principal and interest secured by this Charge:

- (a) The existing leases and future leases of and other agreements for use or occupancy of the whole or any part of the Land, whether written or oral, (hereinafter collectively called the "**Leases**") and all extension and renewals thereof and together with all rents, occupancy payments, fees, insurance proceeds and other monies now due or payable and hereafter to become due and payable to the Assignor under the Leases and under any other extensions and renewals thereof including, without limitation, the benefit of any guarantees relating to the performance and observance by a tenant or occupant of its lease obligations (herein called "**Rents**");
- (b) All benefit and advantage of the Assignor to be derived from the Leases with the full power and authority to demand, sue for, recover, receive and give receipts for the Rents and otherwise to enforce the rights of the Assignor in the name of the said Assignor, its successors and assigns;

to hold unto the said Assignee, its successors and assigns for its absolute use and benefit.

Provided, however, and it is hereby expressly agreed that the Assignor shall be permitted to collect and receive Rents as and when the same shall become due and payable according to the terms of the Leases unless the Assignor shall have made default in payment of principal or interest under this Charge or shall have committed any breach of any covenant contained in this Charge entitling the Assignee to exercise its rights and remedies hereunder and unless and until the Assignee, its successors and assigns shall give notice to the contrary to the tenants, users, occupiers, licences or guarantors, their successors and assigns. Nothing herein contained however shall permit or authorize the Assignor to collect or receive any Rents in advance of the dates specified therein for the payment of the same.

The Assignor covenants and agrees with the Assignee that it will not, without the consent in writing of the Assignee first had and received:

- (a) terminate or take any action to terminate the Leases or consent to or permit any merger of interests of the Assignor and the tenants in respect to the Land;
- (b) cancel or accept a surrender of the Leases, or otherwise permit vacating or cessation of operation by any tenant;
- (c) permit termination of the Leases, or alter or amend the Leases, or otherwise take action with respect to the Leases which in the aggregate will create a material reduction in rent thereunder from that payable as of the date hereof or otherwise materially lessen the obligations of the tenants under the Leases;
- (d) waive any of its rights or remedies under the Leases or the performance by the tenants, its successors or assigns, of any of its obligations thereunder;
- (e) collect or receive or permit to be paid any rents under the Leases in advance of the dates specified therein for the payment of the same save and except for the advance payment of no more than one (1) month's rent;
- (f) consent to any assignment of the tenants' interest in the Leases, or to any subletting by the tenants save and except for an assignment or subletting by the tenants where the tenants remain fully liable under the terms and provisions of the Leases.

The Assignor further covenants and agrees with the Assignee that it has not executed any prior assignments or transfers of the existing Leases and/or of the Rents and, except as disclosed in writing to the Assignee, that it has not granted any modification whatever of the terms of the existing Leases and/or of the Rents and that the Leases are in full force and effect according to the terms thereof.

The Assignor further agrees that the Assignor will not lease or agree to lease any part of the Land except at a rent, on terms and conditions, and to tenants which are not less favourable or desirable than those which a prudent landlord would expect to receive for the premises to be leased.

It is expressly agreed that nothing herein contained shall be deemed to have the effect of making the Assignee, its successors and assigns, responsible for the collection of the Rents or the performance of any covenants, terms or conditions contained in the Leases to be observed and performed by the Assignor or by the tenants and that the Assignee shall not, by virtue of these presents, be deemed to be a Assignee in possession of the Land or to have received on account of the charge indebtedness any monies other than the amount of the Rents actually received by it from time to time in cash less all costs and expenses of collection and out-of-pocket deductions and that the Assignee shall be under no obligation to take any action or proceeding or exercise any remedy for the collection or recovery of the Rents or any part thereof or otherwise to see to or enforce the performance of the tenants, their successors and assigns, of their obligations.

The Assignor covenants and agrees with the Assignee that the Assignor, its successors and assigns, shall and will from time to time and at all times hereafter upon every reasonable request and at the cost and charge of the Assignor, its successors and assigns, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deed, things, assignments and assurances whatsoever transferring and setting over to the Assignee, its successors and assigns, the Leases and any extension or renewals thereof, and all Rents now due or payable and hereafter to become due or payable under the Leases and any extensions or renewals thereof and all other benefits and advantages to be derived therefrom as shall be reasonable required by the Assignee, its successors or assigns.

The Assignor further confirms to the Assignee, its successor and assigns, that, except as disclosed to the Assignee, in writing, there is no outstanding material dispute under the existing Leases and there have been no material defaults thereunder.

Provided it is understood and agreed that a full and complete release of this Charge shall operate as a full and complete release of all of the Assignee's rights and interests hereunder, and that after this Charge has been fully released the assignment contained herein shall be void and of no further effect.

IF any particular provision of this assignment is to be invalid or unenforceable by any court of competent jurisdiction, this assignment shall be interpreted as if such invalid or unenforceable provision were omitted.

THIS assignment shall be construed and governed by the laws of the Province of Ontario.

THIS assignment and everything herein contained shall extend to, bind and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Assignor and the successors and assigns of the Assignee.

**SCHEDULE "A"**

**Legal Description**

Firstly:

Part of the Grove, Plan 8 (Bracebridge), Part of lots 11, 12, 13, and 14, on the north side of Ontario Street, Plan 3 (Bracebridge), and Part of Lot 1, Concession 2 (Macaulay), all designated as Part 1 on Reference Plan 35R-22861;

Secondly:

Part of the Grove, Plan 8 (Bracebridge); Part of Lots 11 and 12 on the north side of Ontario Street, Plan 3 (Bracebridge) designated as Part 2 on Reference Plan 35R-22861;

Thirdly:

Part of Lot 1, Concession 2 (Macaulay) designated as Part 3 on Reference Plan 35R-22861

(Firstly through thirdly being PIN 48115-0429)

Fourthly:

Part of Lot 26, Registrar's Compiled Plan 531, designated as Part 5 on Reference Plan 35R-22861

(PIN 48115-0168)





**Properties**

*PIN* 48115 - 0168 LT  
*Description* PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE ; THE DISTRICT MUNICIPALITY OF MUSKOKA  
*Address* 00028 MCMURRAY ST  
 BRACEBRIDGE

*PIN* 48115 - 0429 LT  
*Description* PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 & 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE, PT LT 1, CON 2 MACAULAY PT 1 35R-22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3 BRACEBRIDGE PT 2 35R-22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R-22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194; TOWN OF BRACEBRIDGE  
*Address* BRACEBRIDGE

**Source Instruments**

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
MT111700	2012 05 03	Charge/Mortgage

**Party From(s)**

*Name* 7743718 CANADA INC.  
*Address for Service* Tier 1 Transaction Advisory Services Inc.  
 250 Consumers Road  
 Suite 501  
 Toronto, Ontario  
 M2J 4V6

I, Raj Singh, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* OLYMPIA TRUST COMPANY  
 2200, 125 - 19th Ave. S.E.  
 Calgary, Alberta  
 T2G 0P6

I, Kelly Revol, Manager, and I, Sarah Fox, Supervisor, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

*Name* B2B BANK  
*Address for Service* B2B BANK  
 199 Bay Street, Suite 610  
 PO Box 35 STN Commerce Court  
 Toronto, Ontario M5L 0A3

I, Brian A. Wale, Senior Manager, and I, Janet Paulino, Senior Administration Officer, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Party To(s)***Capacity**Share*

*Name* COMPUTERSHARE TRUST COMPANY OF CANADA  
*Address for Service* as custodian for Frontenac Mortgage Investment Corporation  
 c/o Pillar Financial Services Inc.  
 14216 Road 38, P.O. Box 208  
 Sharbot Lake, Ontario  
 K0H 2P0

**Statements**

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number MT135137 registered on 2014/01/16

This document relates to registration no.(s)MT111700, MT113813, MT117838 and MT128112.

**Signed By**

Christina Marie Albers	160 Elgin Street, Suite 2600 Ottawa K1P 1C3	acting for Party From(s)	Signed	2014 01 16
------------------------	---	-----------------------------	--------	------------

Tel 613-233-1781

Fax 613-563-9869

I have the authority to sign and register the document on behalf of all parties to the document.

Christina Marie Albers	160 Elgin Street, Suite 2600 Ottawa K1P 1C3	acting for Party To (s)	Signed	2014 01 16
------------------------	---	----------------------------	--------	------------

Tel 613-233-1781

Fax 613-563-9869

I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

GLH LIMITED PARTNERSHIP (A.K.A. GOWLINGS)	160 Elgin Street, Suite 2600 Ottawa K1P 1C3			2014 01 16
---	---	--	--	------------

Tel 613-233-1781

Fax 613-563-9869

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Party To Client File Number : 02387794

# TAB 12

**Properties**

*PIN* 48115 - 0429 *LT* *Interest/Estate* *Fee Simple*  
*Description* PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 & 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE, PT LT 1, CON 2 MACAULAY PT 1 35R-22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3 BRACEBRIDGE PT 2 35R-22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R-22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194; TOWN OF BRACEBRIDGE  
*Address* 28 MCMURRAY STREET  
 BRACEBRIDGE

*PIN* 48115 - 0168 *LT* *Interest/Estate* *Fee Simple*  
*Description* PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE ; THE DISTRICT MUNICIPALITY OF MUSKOKA  
*Address* 00028 MCMURRAY ST  
 BRACEBRIDGE

**Chargor(s)**

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

*Name* MCMURRAY STREET INVESTMENTS INC.  
*Address for Service* 51 Caldari Road  
 Unit M1  
 Vaughan, Ontario  
 L4K 4G3

I, John Davies, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

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

*Name* TRISURA GUARANTEE INSURANCE COMPANY  
*Address for Service* 333 Bay Street  
 Suite 1610  
 Toronto, Ontario  
 M5H 2R2

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$5,000,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* See Standard Charge Terms  
*Interest Rate* See Standard Charge Terms  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* See Standard Charge Terms  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 201104  
*Insurance Amount* full insurable value  
*Guarantor*

**Additional Provisions**

The terms and conditions letter referred to as the Commitment Letter in the standard charge terms filed as number 201104 is the terms and conditions letter issued by the Chargee on September 3, 2014 and accepted on September 4, 2014.

**Additional Provisions**

The indemnity agreement referred to in the standard charge terms filed as number 201104 is the indemnity agreement dated September 30, 2014, entered into by McMurray Street Investments Inc., as Principal and the Chargor herein and the Davies Family Trust, as indemnitor to and in favour of the Chargee as the surety.

Schedule "A" attached to this Charge contains a list of permitted encumbrances.

**Signed By**

Cheryl Ann Wilson 5000 Yonge Street, 10th Floor acting for Chargor Signed 2014 11 21  
Toronto (s)  
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

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

**Submitted By**

CHAITONS LLP 5000 Yonge Street, 10th Floor 2014 11 21  
Toronto  
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Chargee Client File Number : 56354

## SCHEDULE "A"

### PERMITTED ENCUMBRANCES

1. Instrument No. LT92726, registered on October 24, 1978 is a Transfer of Easement over the servient lands described as Part 1 on 35R-5776, as amended by Order registered as Instrument No. LT240194 and partially released by Instrument No. LT165005 and more particularly set out in the Properties Description in PIN 48115-0429 (LT).
2. Instrument No. LT92727, registered on October 24, 1978 is a Transfer of Easement over the servient lands described as Part 1 on 35R-5776, as amended by Order registered as Instrument No. LT240194 and more particularly set out in the Properties Description in PIN 48115-0429 (LT).
3. Instrument No. LT177700, registered on September 15, 1993, is a Notice of Agreement in favour of The Corporation of the Town of Bracebridge.
4. Instrument No. DM355416, registered on February 16, 2004, is a Land Registrars Amendment.
5. Instrument No. MT74064, registered on October 26, 2009, is Notice of Agreement in favour of The District Municipality of Muskoka.
6. Instrument No. MT111700, registered on May 3, 2012, is a Charge/Mortgage of Land in favour of 7743718 Canada Inc., in the principal amount of \$3,500,000 (the "**7743718 Charge**")
  - (a) Instrument No. MT113813, registered on June 22, 2012, is a Transfer of the 7743718 Charge in favour of B2B Trust in Trust for RRSP #114418, B2B Trust in Trust for RRSP #114477, B2B Trust in Trust for RRSP #114586, B2B Trust in Trust for RRSP #114480, B2B Trust in Trust for RRSP #114421, B2B Trust in Trust for RRSP #114446, B2B Trust in Trust for RRSP #114430, B2B Trust in Trust for RRSP #114571, B2B Trust in Trust for RRSP #114398, B2B Trust in Trust for RRSP #114570, B2B Trust in Trust for RRSP #114519, B2B Trust in Trust for RRSP #114469, B2B Trust in Trust for RRSP #114444, B2B Trust in Trust for RRSP #114486, B2B Trust in Trust for RRSP #114422, B2B Trust in Trust for RRSP #114655, B2B Trust in Trust for RRSP #114654, B2B Trust in Trust for RRSP #114509, B2B Trust in Trust for RRSP #114451, B2B Trust in Trust for RRSP #114591, B2B Trust in Trust for RRSP #114511, B2B Trust in Trust for RRSP #114440, B2B Trust in Trust for RRSP #114412, 7743718 Canada Inc., B2B Bank, for RRSP #W114482, B2B Bank, for RRSP #W114491, B2B Bank, for RRSP #W115132
  - (b) Instrument No. MT117838, registered on September 27, 2012, is partial Transfer of the 7743718 Charge from 7743718 Canada Inc. in favour of 7743718 Canada Inc., Olympia Trust Company, in Trust for RRSP #98070 and Olympia Trust Company, in Trust for RRSP #98563
  - (c) Instrument No. MT128112, registered on July 16, 2013, is a partial Transfer of the 7743718 Charge from B2B Bank, in Trust for RRSP #2115132 in favour of 7743718 Canada Inc.
  - (d) Instrument No. MT135139, registered on January 16, 2014, is a Postponement of the 7743718 Charge, as transferred by Instrument Nos. MT113813, MT117838 and MT128112 in favour of Charge/Mortgage of Land registered as Instrument No. MT135137.
  - (e) Instrument No. MT128112, registered on July 16, 2013, is a partial Transfer of the 7743718 Charge from B2B Trust in Trust for RRSP #114418, B2B Trust in Trust for RRSP #114477, B2B Trust in Trust for RRSP #114586, B2B Trust in Trust for RRSP #114480, B2B Trust in Trust for RRSP #114421, B2B Trust in Trust for RRSP #114446, B2B Trust in Trust for RRSP #114430, B2B Trust in Trust for RRSP #114571, B2B Trust in Trust for RRSP #114398, B2B Trust in Trust for RRSP #114570, B2B Trust in Trust for RRSP #114519, B2B Trust in Trust for RRSP #114469, B2B Trust in Trust for RRSP #114444, B2B Trust in Trust for RRSP #114486, B2B Trust in Trust for RRSP #114422, B2B Trust in Trust for RRSP #114655, B2B Trust in Trust for RRSP #114654, B2B Trust in Trust for RRSP #114509, B2B Trust in Trust for RRSP #114451, B2B Trust in Trust for RRSP #114591, B2B Trust in Trust for RRSP #114511, B2B Trust in Trust for RRSP #114440, B2B Trust in Trust for RRSP #114412, B2B Bank, for

RRSP #W114482, and B2B Bank, for RRSP #W114491 in favour of Olympia Trust Company, in Trust for RRSP - 91886, Olympia Trust Company, in Trust for RRSP - 119422, Olympia Trust Company, in Trust for RRSP - 118627, Olympia Trust Company, in Trust for RRSP - 89181, Olympia Trust Company, in Trust for RRSP - 122245, Olympia Trust Company, in Trust for RRSP -119395, Olympia Trust Company, in Trust for RRSP - 119164, Olympia Trust Company, in Trust for RRSP -118229, Olympia Trust Company, in Trust for RRSP - 118230, Olympia Trust Company, in Trust for RRSP - 118285, Olympia Trust Company, in Trust for RRSP - 115197, Olympia Trust Company, in Trust for RRSP -118977, Olympia Trust Company, in Trust for RRSP - 119394, Olympia Trust Company, in Trust for RRSP -118979, Olympia Trust Company, in Trust for RRSP - 118975, Olympia Trust Company, in Trust for RRSP -118742, Olympia Trust Company, in Trust for RRSP -118820, Olympia Trust Company, in Trust for RRSP - 118967, Olympia Trust Company, in Trust for RRSP - 118974, Olympia Trust Company, in Trust for RRSP - 118981, Olympia Trust Company, in Trust for RRSP - 118980, Olympia Trust Company, in Trust for RRSP - 100287, Olympia Trust Company, in Trust for RRSP - 119278, Olympia Trust Company, in Trust for RRSP - 86593, Olympia Trust Company, in Trust for RRSP - 118827.

7. Instrument No. MT135137, registered on January 16, 2014, is a Charge/Mortgage of Land in favour of Computershare Trust Company of Canada, in the principal amount of \$2,000,000 (the "**Computershare Charge**")
8. Instrument No. MT135138, registered on January 16, 2014, is a Notice of General Assignment of Rents General in favour of Computershare Trust Company of Canada, with respect to the Computershare Charge.





**Properties**

**PIN** 48115 - 0168 LT  
**Description** PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE ; THE DISTRICT MUNICIPALITY OF MUSKOKA  
**Address** 00028 MCMURRAY ST  
 BRACEBRIDGE

**PIN** 48115 - 0429 LT  
**Description** PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 & 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE, PT LT 1, CON 2 MACAULAY PT 1 35R-22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3 BRACEBRIDGE PT 2 35R-22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R-22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194; TOWN OF BRACEBRIDGE  
**Address** 28 MCMURRAY STREET  
 BRACEBRIDGE

**Source Instruments**

Registration No.	Date	Type of Instrument
MT111700	2012 05 03	Charge/Mortgage
MT138601	2014 05 15	Transfer Of Charge

**Party From(s)**

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
 IN TRUST FOR RRSP - 91886  
 2200, 125 -9th Ave. S.E.  
 Calgary, Alberta  
 T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
 IN TRUST FOR RRSP - 119422  
 2200, 125 -9th Ave. S.E.  
 Calgary, Alberta  
 T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
 IN TRUST FOR RRSP - 118627  
 2200, 125 -9th Ave. S.E.  
 Calgary, Alberta  
 T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
 IN TRUST FOR RRSP - 89181  
 2200, 125 -9th Ave. S.E.  
 Calgary, Alberta  
 T2G 0P6

**Party From(s)**

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY  
Address for Service Olympia Trust Company  
IN TRUST FOR RRSP - 122245  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY  
Address for Service Olympia Trust Company  
IN TRUST FOR RRSP -119395  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY  
Address for Service Olympia Trust Company  
IN TRUST FOR RRSP -119164  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY  
Address for Service Olympia Trust Company  
IN TRUST FOR RRSP - 118229  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY  
Address for Service Olympia Trust Company  
IN TRUST FOR RRSP - 118230  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY

**Party From(s)**

*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 118285  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 115197  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 118977  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 119394  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 118979  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 118975  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.

**Party From(s)**

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

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
IN TRUST FOR RRSP - 118742  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
IN TRUST FOR RRSP - 118820  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
IN TRUST FOR RRSP - 118867  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
IN TRUST FOR RRSP - 118974  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** Olympia Trust Company  
IN TRUST FOR RRSP - 118981  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY

**Party From(s)**

*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 118980  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 100287  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 119278  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 86593  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 118827  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* OLYMPIA TRUST COMPANY  
*Address for Service* Olympia Trust Company  
IN TRUST FOR RRSP - 98070  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.

**Party From(s)**

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

Name OLYMPIA TRUST COMPANY  
Address for Service Olympia Trust Company  
IN TRUST FOR RRSP - 98563  
2200, 125 -9th Ave. S.E.  
Calgary, Alberta  
T2G 0P6

I, Vibha Bhagat, Supervisor and Tana Trowbridge, Administrator, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Name 7743718 CANADA INC.  
Address for Service Tier 1 Transaction Advisory Services  
Inc.  
3100 Steeles Avenue East, Suite 902  
Markham, Ontario  
L3R 8T3

I, Raj Singh, President, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Party To(s)**

*Capacity*

*Share*

Name TRISURA GUARANTEE INSURANCE COMPANY  
Address for Service 333 Bay Street  
Suite 1610  
Toronto, Ontario  
M5H 2R2

**Statements**

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number MT146380 registered on 2014/11/21

Schedule: Charge/Mortgage of Land No. MT111700 (the Mortgage), was transferred by Instrument Nos. MT113813, MT117838, MT128112 and MT138601. 7743718 Canada Inc. postpones its rights under the Mortgage and Olympia Trust Company, in Trust for RRSP Nos. 98070, 98563, 91886, 119422, 118627, 89181, 122245, 119395, 119164, 118229, 118230, 118285, 115197, 118977, 119394, 118979, 118975, 118742, 118820, 118967, 118974, 118981, 118980, 100287, 119278, 86593 and 118827 postpones its rights under the Mortgage to the rights of Trisura Guarantee Insurance Company under the mortgage registered as Instrument No. MT146380.

This document relates to registration no.(s)Mortgage No. MT111700, Transfer of Charge No. MT113813, Transfer of Charge No. MT117838, Transfer of Charge No. MT128112 and Transfer of Charge No. MT138601 and Mortgage No. MT146380.

**Signed By**

Cheryl Ann Wilson 5000 Yonge Street, 10th Floor acting for Party Signed 2015 01 08  
Toronto From(s)  
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

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

**Submitted By**

CHAITONS LLP 5000 Yonge Street, 10th Floor 2015 01 08  
Toronto  
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Party To Client File Number : 56354



# TAB 13

RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 4257)

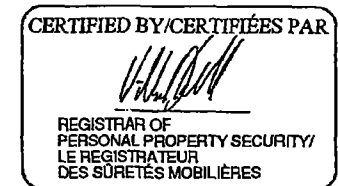
THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR  
  
SEARCH CONDUCTED ON : MCMURRAY STREET INVESTMENTS INC.  
  
FILE CURRENCY : 27MAR 2017

ENQUIRY NUMBER 20170328161137.66 CONTAINS 8 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP  
ATTN: SHANNON MORRIS  
HOLD FOR PICK UP  
TORONTO ON M5J2T9



CONTINUED... 2



RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 4258)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON MCMURRAY STREET INVESTMENTS INC.  
FILE CURRENCY 27MAR 2017

FORM NO. FINANCING STATEMENT / CHAIN FOR LITEN

00 FILE NUMBER  
701369181

CAUTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED	REGISTRATION
ENTRY	NO.	PAGES	SCHEDULE	NUMBER	UNDER	PERIOD
	001	2		20141106 1626 1590 3322	P PPSA	10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME MCMURRAY STREET INVESTMENTS INC.  
04 ADDRESS 2355 SKYMARK AVENUE, SUITE 300 MISSISSAUGA ONTARIO CORPORATION NO. ON L4W 4Y6

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME  
07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / TRISURA GUARANTEE INSURANCE COMPANY  
09 LIEN CHITMAN ADDRESS 333 BAY STREET, SUITE 1610 TORONTO ON M5H 2R2

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

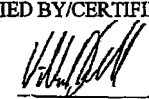
11 MOTOR YEAR MAKE MODEL VIN  
12 VEHICLE

13 GENERAL SECURITY INTEREST IN PURCHASERS' DEPOSIT MONIES PURSUANT TO A DEPOSIT  
14 COLLATERAL TRUST AGREEMENT, RELATING TO THE PROJECT RESIDENCES ON MCMURRAY,  
15 DESCRIPTION LOCATED AT 28 MCMURRAY STREET, BRACEBRIDGE, ONTARIO AND LEGALLY

16 REGISTERING CHAITONS LLP (RAM/CW #56354)  
17 AGENCY ADDRESS 5000 YONGE STREET, 10TH FLOOR TORONTO ON M2N 7E9

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(rj1fs 09/2013)



RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 4259)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON MCMURRAY STREET INVESTMENTS INC.  
FILE CURRENCY 27MAR 2017

FORM 10 FINANCING STATEMENT / CLAIM FOR LTEN

FILE NUMBER  
701369181

CAUTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED	REGISTRATION
FILING	NO	OF	SCHEDULE	NUMBER	UNDER	PERIOD
	002	2		20141106 1626 1590 3322		

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 DEBTOR NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 DEBTOR NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY /

09 LTEN CLAIMANT

ADDRESS

COLLATERAL CLASSIFICATION	MOTOR VEHICLE	AMOUNT	DATE OF	NO FIXED
CONSUMER	ENCUMBERED		MATURITY	MATURITY DATE
GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER

11 MOTOR YEAR MAKE MODEL VALUE

12 VEHICLE

13 GENERAL DESCRIBED IN PINS 48115-0429 (LT) AND 48115-0168 (LT)

14 COLLATERAL

15 DESCRIPTION

16 REGISTERING

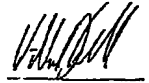
17 AGENT

ADDRESS

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(crj1fs 09/2013)





RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 5  
( 4261)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON MCMURRAY STREET INVESTMENTS INC.  
FILE CURRENCY 27MAR 2017

FORM NO FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
692728461

CANTON	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED	REGISTRATION
FEELING	NO	OF	SCHEDULE	NUMBER	UNDER	PERIOD
	002	003		20131220 0846 1862 1921		

02	DEBTOR	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
03	NAME					
04	BUSINESS NAME	ADDRESS: SOLICITORS, 2355 SKYMARK AVENUE, SUITE 3				

05	DEBTOR	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
06	NAME					
07	BUSINESS NAME	ADDRESS:				

08 SECURED PARTY / GE INVESTMENT CORPORATION  
09 LIFE CLAIMANT  
ADDRESS: 6 ROAD 38, P.O. BOX 208

10	COLLATERAL CLASSIFICATION	MOTOR VEHICLE	AMOUNT	DATE OF	NO. FIXED
	CONSUMER	INCLUDED		MATURITY OR	MATURITY DATE
	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER

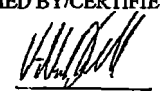
11	MOTOR	YEAR	MAKE	MODEL	VALUE
12	VEHICLE				

13 GENERAL: MUNICIPALLY KNOWN AS 28 MCMURRAY STREET IN BRACEBRIDGE, ONTARIO AND  
14 COLLATERAL: AN ASSIGNMENT OF LIFE INSURANCE WITH RESPECT TO THE LIFE OF JOHN EVAN  
15 DESCRIPTION: DAVIES.

16 REGISTERING  
17 AGENT  
ADDRESS:

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(crjfs 09/2013)



RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.65

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 6  
( 4262)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON MCMURRAY STREET INVESTMENTS INC.  
FILE CURRENCY 27MAR 2017

FORM TO FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
692728461

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO OF PAGES SCHEDULE NUMBER UNDER PERIOD  
003 003 20131220 0846 1862 1921

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME ONTARIO CORPORATION NO.

04 ADDRESS 00  
05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME ONTARIO CORPORATION NO.  
07 ADDRESS

08 SECURED PARTY /  
09 LIEN CLAIMANT ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
CODE INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY FOR MATURITY DATE


11 MOTOR YEAR MAKE MODEL VIN  
12 VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING  
17 AGENT ADDRESS

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(cjr/1fs 09/2013)



RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 7  
( 4263)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON MCMURRAY STREET INVESTMENTS INC.  
FILE CURRENCY 27MAR 2017

FORM 10 FINANCING STATEMENT / CLAIM FOR LIEB

FILE NUMBER  
678392064

00

01

CAPTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED	REGISTRATION
FILING	NO.	PAGES	SCHEDULE	NUMBER	UNDER	PERIOD
	01	001		20120515 1413 1462 8109	P PPSA	5

02

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03

DEBTOR NAME BUSINESS NAME MCMURRAY STREET INVESTMENTS INC.

04

ADDRESS 24 COUNTRY CLUB DR KING CITY ONTARIO CORPORATION NO. 2218179 ON L7B1M5

05

DATE OF BIRTH FIRST GIVEN NAME BAPTIST SURNAME

06

DEBTOR NAME BUSINESS NAME JOHN DAVIES

07

ADDRESS 24 COUNTRY CLUB DR KING CITY ONTARIO CORPORATION NO. ON L7B1M5

08

SECURED PARTY / LANDMARK VEHICLE LEASING CORPORATION

09

ADDRESS 150 OAKDALE ROAD TORONTO ON M3N1V9

10

COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X 46874 31MAY2017

11

YEAR MAKE MODEL VIN  
2011 TOYOTA VENZA 4T3B26BB5BU057229

12

VEHICLE

13

GENERAL

14

COLLATERAL

15

DESCRIPTION

16


REGISTERING LANDMARK VEHICLE LEASING CORPORATION

17

AGENT ADDRESS 150 OAKDALE ROAD TORONTO ON M3N1V9

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 8

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY /  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(ej11s 09/2013)





RUN NUMBER : 087  
RUN DATE : 2017/03/28  
ID : 20170328161137.66

PROVINCE OF ONTARIO  
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PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

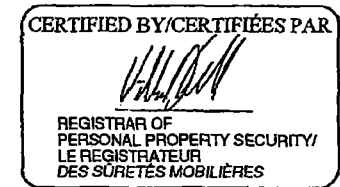
REPORT : PSSR060  
PAGE : 8  
( 4264)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : MCMURRAY STREET INVESTMENTS INC.  
FILE CURRENCY : 27MAR 2017

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
701369181	20141106	1626	1590	3322
692728461	20131220	0846	1862	1921
678392064	20120515	1413	1462	8109

3 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



**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

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

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

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

**Proceedings commenced at Toronto**

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**MOTION RECORD  
(Returnable April 28, 2017)  
Volume 1 of 5**

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Email: [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

*Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of each of the Tier 1 Trustee Corporations*