

**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**

**MOTION RECORD**

**(Returnable: June 30, 2017)**

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(Updated as of June 12, 2017)

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**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**

**MOTION RECORD**

**I N D E X**

<b>Tab</b>	<b>Documents</b>
1	Notice of Motion returnable June 30, 2017
2	Fifth Report of the Receiver dated June 26, 2017
A	Appendix "A" – Request for Proposal
B	Appendix "B" – Realtor Summary
C	Appendix "C" – Legacy Lane Listing Agreement
D	Appendix "D" – Burlington Listing Agreement
E	Appendix "E" – Oakville Listing Agreement
F	Appendix "F" – Kitchener Listing Agreement
G	Appendix "G" – 555 Princess Listing Agreement
H	Appendix "H" – 525 Princess Listing Agreement
I	Appendix "I" – Commitment Letters
Confidential Appendix	Realtor Summary (Confidential)
3	Draft Order



# TAB 1

**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**

**NOTICE OF MOTION  
(Returnable June 30, 2017)**

KSV Kofman Inc. (“**KSV**”) in its capacity as receiver and manager (the “**Receiver**”) of the real property (the “**Real Property**”) registered on title as being owned by Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (555 Princess Street) Inc. (“**555 Princess**”) and Textbook (525 Princess Street) Inc. (“**525 Princess**” and, together with Scollard, Kitchener, Oakville, Burlington, Legacy Lane and 555 Princess, the “**Companies**”, and each a “**Company**”), and of all of the assets, undertakings and properties of the Companies acquired for or used in relation to the Real Property (together with the Real Property, the “**Properties**”) will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 30, 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.

**THE MOTION IS FOR:**

1. An order (the "**Order**") substantially in the form of the draft order attached as Tab "3" of this Motion Record, among other things,
  - (a) authorizing the execution and performance of the listing agreements between the Receiver and each of Royal Lepage Lakes of Muskoka Realty Inc., Colliers Macaully Nicolls Inc, and SVN Rock Advisors Inc.;
  - (b) approving the strategic process (the "**Strategic Process**"), as described in Section 3 of the Receiver's Fifth Report dated June 26, 2017 (the "**Fifth Report**");
  - (c) approving the Loans (defined below) and granting certain ancillary relief in relation to the Loans; and
  - (d) sealing the confidential appendix to the Fifth Report, pending further Order of this Court.
2. Such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:****Overview**

3. The Companies are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Companies' projects are in pre-construction (collectively, the "**Projects**").

4. Each of the Companies was advanced monies by various entities (collectively, the “**Trustee Corporations**”), which monies had been raised by the Trustee Corporations from investors (the “**Investors**”) through syndicated mortgage investments. The Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporations and the Companies and four other related entities.

5. Grant Thornton Ltd. was appointed Trustee (“**Trustee**”) of the Trustee Corporations pursuant to the Order of the Court made on October 27, 2016.

6. KSV was appointed as Receiver of certain property owned by Scollard pursuant to the Receivership Order made on February 2, 2016, and was appointed the Receiver of certain property owned by Kitchener, Oakville, Burlington, Legacy Lane, 555 Princess and 525 Princess pursuant to the Amended and Restated Receivership Order made on April 28, 2017.

7. The Investors have formed a committee to represent their interests in these proceedings (the “**Investor Committee**”). Chaitons LLP was appointed representative counsel to the Investors (“**Representative Counsel**”) pursuant to an Order of the Court dated January 24, 2017.

### **Sealing Order**

8. The Receiver solicited proposals from seven realtors to act as listing agent for one or more of the Properties, including national and regional realtors.

9. The deadline for proposals was May 23, 2017. Five of seven realtors submitted proposals.

10. The Receiver prepared a summary of the proposals (the “**Realtor Summary**”) and provided it to the Trustee, Representative Counsel and to the Investor Committee representatives.

11. The Receiver respectfully requests that the unredacted Realtor Summary be filed with the Court on a confidential basis and be sealed (“**Sealing Order**”).

12. The Realtor Summary contains confidential information; if it is not sealed, bidders will have access to value estimates provided by realtors which could be prejudicial to the Strategic Process.

13. The Receiver is not aware of any party that will be prejudiced if the information is sealed and believes that the Sealing Order is appropriate in the circumstances.

### **Strategic Process**

14. The Receiver, in conjunction with the realtors selected by the Receiver to market the Properties for sale (the “**Realtors**”), has developed the Strategic Process (summarized in section 3.4 of the Fifth Report) comprised of the following three phases:

- (a) *Phase 1 (Underwriting)* – involves due diligence, finalizing the marketing materials and identification of prospects;
- (b) *Phase 2 (Marketing)* – involves a three stage marketing process culminating in prospective purchasers submitting PSAs or other proposals, including development proposals; and
- (c) *Phase 3 (Offer Review and Negotiation)* – involves the selection of successful bids, seeking approval of the transaction and closing the transaction.

15. It is appropriate for the Court to approve the Strategic Process, including the retention of the Realtors as the listing agents, for the following reasons:

- (a) the Receiver solicited proposals from multiple realtors for each of the Properties in a competitive bidding process;
- (b) the Realtors have experience selling developments similar to the Properties and have relationships with targeted bidders;
- (c) the Realtors' commission structures are consistent with market and also reflect the challenges of selling the Projects for their intended use;
- (d) the Strategic Process provides flexibility for the Receiver to consider options for the Properties, including sale and development proposals;
- (e) there should be no delay in commencing the Strategic Process;
- (f) the Strategic Process is flexible so that timelines can be established based on market feedback; and
- (g) the Receiver discussed the realtor selections with the Trustee, Representative Counsel and the relevant members of the Investor Committee. The Trustee has consented to the realtor selections and neither the Representative Counsel nor the Investor Committee members have objected to the realtor selections.

### **Receiver's Borrowings**

16. The Receiver approached three parties to determine their interest in providing funding for the 525 Princess, 555 Princess and Legacy Lane receivership proceedings. The proposal provided by MarshallZehr Group Inc. ("MZG") is the least expensive of the three parties contacted.

17. Subject to Court approval, the following loan facilities are to be provided by MZG:

- (a) up to \$300,000 to fund the Legacy Lane receivership proceedings;
- (b) up to \$400,000 to fund the 525 Princess receivership proceedings; and
- (c) up to \$400,000 to fund the 555 Princess receivership proceedings (collectively, the “Loans”);

18. The Receiver believes that the terms of the Loans are reasonable in the circumstances, based on, among other factors, the following:

- (a) they will provide the Receiver with liquidity to fund the 525 Princess, 555 Princess and Legacy Lane proceedings;
- (b) the cost of MZG's facilities are the least expensive of the three parties approached;
- (c) the Loans are consistent with other recent real estate restructurings, including those involving other of the Companies and those provided by MZG to the Memory Care Entities, and the effective annualized interest rate of the Loans is consistent with market for a loan of this nature; and
- (d) the Receiver discussed the key terms of the Loans with the Trustee, Representative Counsel and the relevant Investor Committee members and the Receiver understands that none of these parties object to the Loans.

### **General**

19. The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the inherent and equitable jurisdiction of this Court.

20. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended.

21. Such further and other grounds as counsel may advise and this Court may permit.

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

1. the Fifth Report, filed herewith; and
2. such further and other material as counsel may advise and this Court may permit.

June 26, 2017

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

**Sean Zweig (LSUC#57307I)**  
Tel: (416) 777-6254  
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Counsel to the Receiver,  
KSV Kofman Inc.



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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable June 30, 2017)**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
Toronto, ON M5X 1A4

**Sean H. Zweig** (LSUC#57307I)  
Tel: (416) 777-6254  
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Counsel to the Receiver,  
KSV Kofman Inc.

# **TAB 2**



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

June 26, 2017

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

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

FIFTH REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

JUNE 26, 2017

## 1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (555 Princess Street) Inc. ("555 Princess") and Textbook (525 Princess Street) Inc. ("525 Princess") (collectively the "Companies", and each a "Company"), and of all of their assets, undertakings and properties acquired for or used in relation to their real property.
2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") dated October 27, 2016, Grant Thornton Ltd. was appointed Trustee ("Trustee") of eleven entities<sup>1</sup> (collectively, the "Trustee Corporations") which raised monies from investors (the "Investors") through syndicated mortgage investments. The Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporation and the Companies and four other related entities.

---

<sup>1</sup> 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

3. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of certain property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
4. Pursuant to an order made on April 13, 2017, the Court approved a process to solicit offers for the development and/or sale of certain property owned by Scollard.
5. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking an order amending and restating the Receivership Order to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 555 Princess and 525 Princess (the “Real Property”), as well as all of the assets, undertakings and properties of these entities acquired for or used in relation to the Real Property (together with the Real Property, the “Properties”) (the “Amended and Restated Receivership Order”).
6. On April 28, 2017, the Court made the Amended and Restated Receivership Order. The Amended and Restated Receivership Order was further amended and restated by a Court order made on May 2, 2017 to rectify certain clerical errors.
7. The principal purpose of these proceedings is to, *inter alia*, complete transactions that maximize value for the benefit of the Companies' creditors.

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Companies;
  - b) summarize the recommended marketing process to solicit offers for the development and/or sale of the Properties (the “Strategic Process”);
  - c) discuss the following loan facilities to be provided by MarshallZehr Group Inc. (“MZG”):
    - i. up to \$300,000 to fund the Legacy Lane receivership proceedings;
    - ii. up to \$400,000 to fund the 525 Princess receivership proceedings; and
    - iii. up to \$400,000 to fund the 555 Princess receivership proceedings (collectively, the “Loans”);
  - d) recommend that the Court issue an order, among other things:
    - approving the Strategic Process;
    - approving the Loans; and
    - sealing the confidential appendix until further order of this Court.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Companies. The Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

## 2.0 Background

1. The Companies are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Companies' projects are in pre-construction<sup>2</sup> (collectively the "Projects").
2. The secured amounts borrowed by the Companies total approximately \$66.3 million<sup>3</sup>, being approximately \$59.3 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$7.0 million owing to other lenders (the "Other Lenders"). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Companies were intended to be used to purchase real property and to pay soft costs associated with the development of the Projects.

## 2.1 Properties

1. The table below provides a summary of the Properties.

Company	Municipal Address	Purchase Price (\$)	Intended Use
Legacy Lane	16 Legacy Lane, Huntsville	650,000	Townhomes
Burlington	2168 and 2174 Ghent Avenue, Burlington	2,500,000	Alzheimer Facility
Kitchener	169 Borden Avenue, Kitchener	3,950,000	Alzheimer Facility
Oakville	103 and 109 Garden Drive, Oakville	1,945,000	Alzheimer Facility
555 Princess Street	555 Princess Street, Kingston	2,000,000	Student Housing
525 Princess Street	525, 527, and 531 Princess Street and 349 and 351 Alfred Street, Kingston	2,400,000	Student Housing

<sup>2</sup> Footings and foundations have been laid down at the Project owned by Burlington.

<sup>3</sup> Represents the principal amounts owed, excluding interest and fees.

## 2.2 Investors Committee and Representative Counsel

1. The Investors have formed a committee to represent their interests in these proceedings (the "Investor Committee"). Each member of the Investor Committee represents a different Project.
2. On January 24, 2017, the Court made an order appointing Chaitons LLP as representative counsel to the Investors ("Representative Counsel").

## 3.0 Strategic Process

### 3.1 Realtor Proposals

1. The Receiver solicited proposals from seven realtors to act as listing agent for one or more of the Properties, including national and regional realtors. The Receiver requested that each realtor provide, among other information, background information regarding its firm's experience with real estate similar to the Properties, a marketing plan which considered both development opportunities and an outright sale of the Properties, an estimate of value of the Property under sale and development scenarios and the realtor's proposed commission structure. A copy of the request for proposal sent to the realtors is attached as Appendix "A".
2. Each realtor was provided access to an electronic data room after it executed a confidentiality agreement.
3. The deadline for proposals was May 23, 2017. Five of seven realtors submitted proposals.
4. The Receiver prepared a summary of the proposals (the "Realtor Summary") and provided it to the Trustee, Representative Counsel and to the Investor Committee representatives. The Receiver is proposing to seal the value ranges in the Realtor Summary. Accordingly, a redacted Realtor Summary is provided in Appendix "B". An unredacted Realtor Summary is attached as Confidential Appendix "1".

### 3.2 Confidentiality

1. The Receiver respectfully requests that the unredacted Realtor Summary be filed with the Court on a confidential basis and be sealed ("Sealing Order") as it contains confidential information. If the unredacted Realtor Summary is not sealed, bidders would have access to value estimates provided by realtors which could be prejudicial to the Strategic Process. The Receiver is not aware of any party that will be prejudiced if the information is sealed. The Receiver believes the proposed Sealing Order is appropriate in the circumstances.

### 3.3 Realtor Selection

1. The realtors selected by the Receiver to market the properties for sale (the "Realtors") are provided in the table below together with the reasons for their selection.



Realtor	Property	Reasons
Royal LePage Lakes of Muskoka Realty Inc. <sup>4</sup>	Legacy Lane	<ul style="list-style-type: none"> <li>➤ Regional broker with knowledge of the local market and most likely local buyers.</li> <li>➤ Appears to be among most active commercial realtors in the area.</li> </ul>
Colliers Macaulay Nicolls Inc.	Burlington, Kitchener and Oakville	<ul style="list-style-type: none"> <li>➤ Experience selling similar properties.</li> <li>➤ Colliers has a global reach. It intends to run a broad marketing campaign, considering buyers who may acquire the property for its intended use and buyers who may develop it for other uses.</li> <li>➤ Proposal provides a thorough analysis of the potential value of the project in a joint venture.</li> <li>➤ Properties will be marketed both jointly and separately as their intended use is similar.</li> </ul>
SVN Rock Advisors Inc.	525 Princess, 555 Princess	<ul style="list-style-type: none"> <li>➤ Significant experience selling student housing projects.</li> <li>➤ These properties will be marketed both jointly and separately as they are across the street from one another and may be complimentary to each other. The properties may attract a single purchaser.</li> </ul>

2. The commission structures negotiated by the Receiver for the Realtors are consistent with their respective markets, but also recognize the complexities selling these developments for their intended use. Feedback from realtors suggests that the market is limited for buyers of student housing projects and cognitive care facilities.
3. A copy of each of the listing agreements is provided in Appendices "C" through "H".

### 3.4 Strategic Process

1. The Strategic Process developed by the Receiver, in conjunction with the Realtors, is substantially similar for each of the Properties. A summary of the Strategic Process is provided in the table below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	<ul style="list-style-type: none"> <li>➤ Realtors to review all available documents concerning the Property, including environmental, planning and development reports.</li> </ul>	Weeks 1 and 2
Finalize marketing materials	<ul style="list-style-type: none"> <li>➤ The Realtors and the Receiver to: <ul style="list-style-type: none"> <li>○ prepare a development summary;</li> <li>○ populate an online data room;</li> <li>○ prepare a confidentiality agreement ("CA"); and</li> <li>○ prepare a Confidential Information Memorandum ("CIM").</li> </ul> </li> </ul>	

<sup>4</sup> As part of SVN Rock Advisors Inc. ("SVN") listing proposal, SVN intended to engage Royal LePage Lakes of Muskoka Realty Inc. ("Royal LePage") to list the Legacy Lane property for sale. The Receiver advised SVN and Royal LePage that it intended to engage Royal LePage directly.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Prospect Identification	<ul style="list-style-type: none"> <li>➤ Realtors to develop a master prospect list. The Realtors will qualify and prioritize prospects.</li> <li>➤ Realtors will also have pre-marketing discussions with targeted developers.</li> </ul>	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ offering summary and marketing materials printed;</li> <li>○ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition);</li> <li>○ telephone and email canvass of leading prospects; and</li> <li>○ meet with and interview bidders.</li> </ul> </li> </ul>	Week-3
Stage 2	<ul style="list-style-type: none"> <li>➤ Realtors to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room.</li> <li>➤ Realtors to facilitate all diligence by interested parties.</li> <li>➤ Realtors will canvass the market and then determine a bid date, in consultation with the Receiver.</li> <li>➤ Receiver will prepare a Vendor's form of Purchase and Sale Agreement (the "PSA"), which will be made available in the data room.</li> </ul>	Week 4 – TBD
Stage 3	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.</li> </ul>	TBD
<i>Phase 3 – Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> <li>➤ Proposal short listing and approval.</li> <li>➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs one or more times.</li> </ul>	TBD
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	TBD
Transaction Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for transaction approval and close transaction.</li> </ul>	TBD

2. As reflected in the table, bid deadlines (and the deadlines that follow) have not yet been established. This is due to the intended development purpose of each project, for which there are likely a limited number of buyers. Prior to setting deadlines, the Receiver believes it is appropriate to gauge feedback from the market. Accordingly, the Receiver has asked each realtor to focus on both purchasers for the Properties' intended use and purchasers who may wish to develop the Properties differently. It is intended that after the Realtors complete their initial marketing efforts (anticipated to be around the end of the fourth week of the Strategic Process), the Receiver and the Realtors would establish the deadlines for submitting offers on the Properties. The offer deadlines may ultimately be different for each of the Properties.

3. Additional attributes of the Strategic Process include:
  - a) the Properties will be marketed on an “as is, where is” basis;
  - b) the Receiver will have the right to reject any and all offers, including the highest offer; and
  - c) transactions will be subject to Court-approval.

### **3.5 Strategic Process Recommendation**

1. The Receiver recommends that the Court issue an order approving the Strategic Process, including the retention of the Realtors, for the following reasons:
  - a) the Receiver solicited proposals from multiple realtors for each of the Properties;
  - b) the Realtors have experience selling developments similar to the Properties and have relationships with targeted bidders;
  - c) the Realtors' commission structures are consistent with market. The commissions also reflect the challenges selling the projects for their intended use and the potential that each process is lengthy;
  - d) the Strategic Process provides flexibility for the Receiver to consider options for the Properties, including sale and development proposals;
  - e) the Strategic Process is flexible so that timelines are established based on market feedback; and
  - f) the Receiver discussed the realtor selections with the Trustee; Representative Counsel and the relevant members of the Investor Committee. The Trustee has consented to the realtor selections and neither Representative Counsel nor the Investor Committee members have expressed an objection to the Receiver.

## **4.0 Receiver's Borrowings**

1. The Receiver approached three parties to determine their interest in providing funding for the 525 Princess, 555 Princess and Legacy Lane receivership proceedings. MZG's proposal is the least expensive of the three parties contacted. MZG has provided similar facilities in the Kitchener, Oakville and Burlington (the “Memory Care Entities”) proceedings.
2. The terms of the Loans are provided below and copies of the Commitment Letters are provided in Appendix “I”. The Commitment Letters are subject to Court approval.
3. A summary of the key terms of the Loans is as follows:
  - Amounts:
    - 525 Princess: \$400,000

- 555 Princess: \$400,000
- Legacy Lane: \$300,000
- Term: the earliest of (i) demand; and (ii) nine months from the date of the initial advance, which may be extended for an additional twelve months upon at least 30 days prior written notice;
- Lender fee: \$15,000 for each Loan;
- Repayment: any time, without penalty, with three business days written notice to MZG;
- Interest rate: 9.5% per annum, compounded monthly. A nine month interest reserve is to be held back from the first advance;
- Draws and Security: funds are to be advanced by way of Receiver's Certificates. Each of the Loans is to be secured by way of the Receiver's Borrowings Charge on the assets of the applicable borrower only; and
- Material Conditions: the Receiver understands that all conditions (other than Court approval) outlined in the Commitment Letters have been satisfied or waived.

#### 4.1 Loans Recommendations

1. The Receiver considered the following factors regarding the Loans:
  - a) they will provide the Receiver with liquidity necessary to fund the 525 Princess, 555 Princess and Legacy Lane proceedings;
  - b) the Receiver approached three parties. The cost of MZG's facilities are the least expensive of the three;
  - c) the Receiver is of the view that the terms of the Loans are consistent with other recent real estate restructurings, including those involving other of the Companies and those provided by MZG to the Memory Care Entities. Based on KSV's recent experience, including its real estate experience, the effective annualized interest rate of the Loans (estimated to be 13.6%<sup>5</sup>) is consistent with market for a loan of this nature; and
  - d) the Receiver discussed the Commitment Letter with the Trustee, Representative Counsel and the relevant Investor Committee members and the Receiver has not been advised of any objection to the Loans.
2. Based on the foregoing, the Receiver believes that the terms of the Loans are reasonable in the circumstances.

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<sup>5</sup> Including Lender's fees.

## 5.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,



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

**TAB “A”**

## Appendix "A"

**Request for Proposals for  
REAL ESTATE BROKER SERVICES**

**Re: 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 "Companies")**

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on February 2, 2017, as amended by orders of the Court made on April 28, 2017 and May 2, 2017, KSV Kofman Inc. was appointed receiver and manager ("Receiver") of the real property ("Real Property") registered on title as being owned by the Companies and of all of the assets, undertakings and properties of the Companies acquired for or used in relation to the Real Property (together with the Real Property, the "Property").

The Receiver invites proposals to provide real estate broker services for the Real Property municipally described as follows:

<b>Company</b>	<b>Address</b>
Legacy Lane Investments Ltd.	16 Legacy Lane, Huntsville
1703858 Ontario Inc.	2168 and 2174 Ghent Avenue, Burlington
Memory Care Investments (Kitchener) Ltd.	169 Borden Avenue, Kitchener
Memory Care Investments (Oakville) Ltd.	103 and 109 Garden Drive, Oakville
Textbook (525 Princess Street) Inc.	525, 527, and 531 Princess Street and 349 and 351 Alfred Street, Kingston
Textbook (555 Princess Street) Inc.	555 Princess Street, Kingston

**Proposals must be submitted to Noah Goldstein, Senior Manager, KSV Kofman Inc., 150 King Street West, Suite 2308, Toronto, Ontario M5H 1J9 by 5:00 p.m. (Toronto time) on May 23, 2017.**

For more information or questions, please contact Mr. Goldstein at (416) 932-6207 or at [nqgoldstein@ksvadvisory.com](mailto:nqgoldstein@ksvadvisory.com).

**A. Background**

- The Receiver is now accepting proposals ("Proposals") to act as listing agent to solicit sale, investment and/or development proposals for the Property. The Receiver may engage one or more realtors in connection with the marketing of the Property.
- The terms of any sale, investment and/or development process (the "Strategic Process") and the selection of a realtor(s) are subject to Court approval.
- Copies of all Court materials these proceedings are available on the Receiver's website at:  
  
<http://www.ksvadvisory.com/insolvency-cases/textbook-525-princess-street-inc/>
- A brief summary of the Property is provided below. More information is provided in a data room maintained by the Receiver. Realtors can obtain access to the data room once they sign the confidentiality agreement attached as Appendix "B".



525 Princess Street and 555 Princess Street, Kingston

- Textbook (525 Princess Street) Inc. and Textbook (555 Princess Street) Inc. intended to develop a student residence on each of the properties. The properties are located approximately one kilometer from Queen's University.
- The Receiver understands that the properties are currently zoned for residential use and that a rezoning application would need to be made to develop a mid or high-rise building. Construction has not commenced on either of the properties.

169 Borden Avenue, Kitchener, 2168 and 2174 Ghent Avenue, Burlington and 103 and 109 Garden Drive, Oakville

- Memory Care Investments (Kitchener) Ltd. ("MC Kitchener"), Memory Care Investments (Oakville) Ltd. ("MC Oakville"), 1703858 Ontario Inc. ("MC Burlington") intended to develop these properties into long term care facilities for individuals suffering from Alzheimer's.
- The Receiver has been advised that each of the properties has been zoned and approved for their intended use. Construction has not commenced on any of the properties.
- The Receiver has been advised that MC Burlington has paid approximately \$1.3 million of development charges in connection with obtaining building permits and that neither MC Oakville nor MC Kitchener have paid any development charges.

16 Legacy Lane, Huntsville

- The Receiver understands that the Huntsville property is zoned and approved for 57 residential townhome units. The Receiver has been advised that building permits have been obtained and the site has been cleared and graded in preparation for construction.

**B. Proposal Submission Deadline**

- Proposals are to be submitted to the Receiver by 5:00 p.m. (Toronto time) on May 23, 2017.

**C. Realtor's Role**

The realtor's role will include, *inter alia*:

- developing a detailed marketing process, including timelines for the Strategic Process, with the assistance of the Receiver;
- establishing an estimated value for the Property;
- preparing all marketing materials, with input from the Receiver;
- advertising the Property at the agent's expense;
- obtaining and negotiating confidentiality agreements from interested parties;
- showing the Property to interested parties and working with the Receiver to maintain a data room or data rooms to facilitate the Strategic Process;

- qualifying interested parties from a financial prospective;
- assisting interested parties with their due diligence;
- assisting the Receiver to assess offers submitted, including development proposals and sale proposals;
- providing the Receiver with a report summarizing the Strategic Process, to be relied upon by the Receiver to support the Receiver's recommended transaction; and
- assisting the Receiver to close a transaction.

#### **D. Proposal Content**

The Proposal must contain the following:

1. **Work Plan:** all bidders shall provide a detailed work plan.
2. **Highest and Best Use:** a discussion concerning the highest and best use for the property, including options to maximize recoveries and whether there are uses superior to the Company's intended use. This will be a key criterion when evaluating proposals. All bidders shall provide an estimate of the value of the Property, together with supporting assumptions.
3. **Firm Background and Staff Experience:** all bidders shall provide background information concerning their firm, including the experience of their staff who will be working on this assignment (including résumés).
4. **Bidder's Liability Insurance Certificate:** a copy of the bidder's liability insurance certificate is to be included.
5. **Compensation Structure:** all Proposals shall indicate the proposed compensation structure.
6. **Conflict of Interest Statement:** all bidders shall disclose any professional or personal financial interests which could be a possible conflict of interest. In addition, all bidders shall further disclose any arrangements to derive additional compensation.

#### **E. Proposal Consideration**






The factors on which each Proposal will be considered include the following:

- Bidder's marketing plan;
- Relevant experience;
- Depth of reach, including international targets (to the extent applicable);
- Professional qualifications of individuals assigned to the project;
- Compensation structure; and
- Other factors as determined by the Receiver at its sole discretion.

**TAB “B”**

## Appendix "B"

## Summary of Listing Proposals for the Textbook Group of Companies

Realtor	Properties Included In proposal	Commission percentage	Listing Timeline	Other
	All properties	Portfolio sale (one purchaser): 1.95%, plus 1% co-operating broker.  Individual sales: 2.25%, plus 1.5% co-operating broker.	Pre-marketing: 1 week Marketing: 6 weeks Bids & negotiations: 4 weeks Due diligence: 0-6 weeks Closing: 4-8 weeks Total: 15-25 weeks	Key contacts: Victor Cotic and Jeremiah Shamesh <ul style="list-style-type: none"> <li>KSV has experience working with Colliers</li> <li>Proposal notes Colliers' strong market knowledge and experience in the Halton Region</li> <li>key marketing details: <ul style="list-style-type: none"> <li>offer properties un-priced with bid date 45 days from marketing launch</li> <li>detailed proposal comparing value of outright sale versus a joint venture arrangement</li> </ul> </li> </ul>
	All properties	Memory Cara properties: 3% if sold exclusively and 4% if sold with co-operating broker  Legacy Lane and Kingston properties: 4% if sold exclusively and 5% if sold with co-operating broker	Pre-marketing: 2 weeks Marketing: 8 weeks Bids & negotiations: 2 weeks Due diligence: 3 weeks Closing: 4 weeks Total: 19 weeks	Key contacts: Peter McKenna and Elliot Medoff <ul style="list-style-type: none"> <li>KSV has experience working with JLL</li> <li>JLL proposes to engage regional brokers to assist with the sales of Kitchener and Kingston properties</li> <li>minimal content provided with respect to property background and sales strategy for each property</li> <li>key marketing details: <ul style="list-style-type: none"> <li>goal to elicit firm offers with no due diligence period</li> <li>interested parties will be asked to submit a LOI. LOIs will be used to create a shortlist for a second bids</li> </ul> </li> </ul>
	All properties	SVN as exclusive broker: 4%  Co-operating broker: 2% for SVN and 2% for co-operating broker	Pre-marketing: 4 weeks Marketing: 8 weeks Bids & negotiations: 3 weeks Due diligence: 4 weeks Closing: 4 weeks Total: 23 weeks	Key contact: Derek Lobo <ul style="list-style-type: none"> <li>SVN has direct experience with the Kingston sites - SVN brokered the sale of these sites to Textbook</li> <li>experienced broker in student housing</li> <li>SVN has a strong referral from a real estate lender known to KSV regarding SVN's student housing capabilities</li> <li>key marketing details: <ul style="list-style-type: none"> <li>will seek firm offers from potential purchasers</li> </ul> </li> <li>SVN proposed to retain Royal LePage to sell the Legacy Lane property. KSV contacted and dealt with Royal LePage directly.</li> </ul>
<b>Proposals for Individual Properties</b>				
	Kingston only	3.5% of selling price with an override of 1% if a cooperating broker is involved  Open to incentive based commission structure	Pre-marketing: 2 weeks Marketing: 4 weeks Bids & negotiations: 2 weeks Due diligence & closing: 8 weeks Total: 16 weeks	Key contacts: Peter Kostogiannis and Martin Skoknick <ul style="list-style-type: none"> <li>proposal includes details of comparable land sales completed by C&amp;W in Kingston</li> <li>proposal provides comprehensive discussion surrounding the Kingston market, zoning and comparable sales</li> <li>proposal provides sample of potential target buyers (student residence developers, condo developers, etc.)</li> <li>proposal notes C&amp;W's experience selling development lands, but does not note any student housing experience</li> <li>key marketing details: <ul style="list-style-type: none"> <li>market properties on an un-priced basis</li> <li>allow potential purchasers to bid on one or both properties</li> <li>set date where bidding would start, but no hard bid deadline</li> </ul> </li> </ul>
	Legacy Lane property (Huntsville) only	Suggested range of 5-7%	Not included	Key contact: John Jarvis <ul style="list-style-type: none"> <li>appears to be knowledgeable of the Huntsville area and has highlighted his relationships with numerous developers in the area</li> <li>proposal provides comparable transactions closed by John (values between \$85,000 and \$1.2 million)</li> <li>minimal detail provided regarding marketing strategy</li> <li>proposal lacks professional polish</li> </ul>

**TAB “C”**

## Appendix "C"

**Listing Agreement**  
**Authority to Offer for Sale**

This is a **Multiple Listing Service® Agreement**  **OR** **Exclusive Listing Agreement**  **EXCLUSIVE**  
BETWEEN: See "Rider to Listing Agreement" (Seller's Initials) DM (Seller's Initials)  
BROKERAGE: \_\_\_\_\_ (the "Listing Brokerage") Tel.No. (\_\_\_\_\_) \_\_\_\_\_  
SELLER(S): \_\_\_\_\_ (the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as \_\_\_\_\_ (the "Property")  
the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable right to act as the Seller's agent,**  
commencing at 12:01 a.m. on the See "Rider to Listing Agreement" day of \_\_\_\_\_, 20\_\_\_\_,  
until 11:59 p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Listing Period").

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

to offer the property for sale at a price of \_\_\_\_\_ Dollars (CDNS) 1,000,000 DM  
DM in the Seller's sole and absolute discretion

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

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

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

**2. COMMISSIONS:** In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of \_\_\_\_\_% of the sale price of the Property or See "Rider to Listing Agreement" DM  
for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement ~~OR such other terms and conditions as the Seller may accept~~ Subject to the terms and conditions set out in the Listing Agreement DM  
The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within \_\_\_\_\_ days after the expiration of the Listing Period (Holdover Period), as long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.  
The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing to the Seller's default or payment said commission to be payable on the date of the completion of the purchase of the Property.  
Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amount paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.  
All amounts set out as commission are to be paid plus applicable taxes on such commission.

**3. REPRESENTATIONS:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service.  
The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay the co-operating brokerage a commission of \_\_\_\_\_% of the sale price of the Property or See "Rider to Listing Agreement" DM  
\_\_\_\_\_ out of the commission the Seller pays the Listing Brokerage.

INITIALS OF LISTING BROKERAGE: DM INITIALS OF SELLER(S): DM



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

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

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

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

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

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

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

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

4. **FINES AND FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

5. **DEFERRED OF OFFER:** The Seller agrees that during the Listing Period, the Seller will advise the Listing Brokerage immediately of all offers from any source whatsoever and all offers in purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

6. **MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.

7. **WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

8. **INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. The Seller agrees to indemnify and hold harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the presentation period under this Agreement, caused or contributed to by the result of any successful or unsuccessful representation made by the Seller in this Agreement or the marketing of the Property. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from liability for property damage to others caused in any way over and above the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, independent contractors and brokers, Listing Brokerage and any co-operating brokerage and all of its employees, independent contractors, independent contractors and brokers, Listing Brokerage and any co-operating brokerage or co-operating brokerage under by anyone who attends to view the Property.

9. **FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided.

10. **VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above named regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

11. **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the internet; disclosing Property information to prospective buyers, brokers, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artists renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the

INITIALS OF LISTING BROKERAGE:

*[Handwritten initials]*

INITIALS OF SELLER(SH):

*[Handwritten initials]*

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

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



Done

Done Not

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

13. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

13. CONFLICT OR DISCREPANCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereto, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedules attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

14. ELECTRONIC COMMUNICATION: This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

15. SCHEDULES: See "Order to Listing Agreement" and other form attached hereto form(s) part of this Agreement.

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

(Authorized to bind the Listing Brokerage)

DATE

June 23/17

(Name of Person Signing)

Daniel McCusker

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

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

(Signature of Seller)

(Seal)

DATE

July 26/17

416.932.6228 (Tel. No.)

(Signature of Seller)

(Seal)

DATE

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

(Signature)

(Seal)

DATE

DECLARATION OF INSURANCE

The broker/salesperson

(Name of Broker/Salesperson)

hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

(Signature) of Broker/Salesperson

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a true copy of this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Signature of Seller)

Date

(Signature of Seller)

Date

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## Schedule "A"

Re: Listing Agreement (the "Agreement") for 18 Legacy Lane in the city of Huntsville, Ontario (the "Property") between ROYAL LEPAGE LAKES OF MUSKOKA REALTY INC. (the "Listing Brokerage") and KSV KOFMAN INC. ("the Seller"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of the Property owned by Legacy Lane Investments Ltd. ("Legacy Lane") and all of the assets, undertakings and properties of Legacy Lane acquired for or used in relation to the Property.

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

1. **Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Court order appointing the Seller and/or the Seller's appointment as receiver and manager of the Property owned by Legacy Lane is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by Court order to enforce their rights and/or remedies against the Property.

2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of the Property unless and until the sale of the Property has been completed and the applicable Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).

3. **Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period.

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

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

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

- (a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an unpriced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));

- (b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below) or that the Listing Brokerage shall pay the Cooperating Agent from the Listing Fee (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the following process:

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

*DM*

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	which will be made available in the data room.	
Stage 3	➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.	TBD
<i>Phase 3 - Offer Review and Negotiations</i>		
	➤ Proposal short listing and approval. ➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs on one or more times.	TBD
Selection of Successful Bids	➤ Select successful bidder and finalize definitive documents.	TBD
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	TBD

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

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

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

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

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

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

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information

in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

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

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

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

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

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

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

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

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

ON

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

**ROYAL LEPAGE LAKES OF MUSKOKA REALTY  
INC.**

Per: 

Name: Darryl McCullough  
Title: Officer and Broker

**KSV KOFMAN INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER AND  
MANAGER OF CERTAIN PROPERTY OF  
LEGACY LANE INVESTMENTS LTD. AND NOT IN  
ITS PERSONAL CAPACITY**

Per: 

Name: Robert Kofman  
Title: President





**TAB “D”**

## Appendix "D"

**OREA** Ontario Real Estate Association  
Form 200  
for use in the Province of Ontario


**Listing Agreement  
Authority to Offer for Sale**

This is a Multiple Listing Service® Agreement  OR Exclusive Listing Agreement  EXCLUSIVE

BETWEEN: *See "Rider to Listing Agreement"*  
BROKERAGE: *See "Rider to Listing Agreement"*  
.....(the "Listing Brokerage") Tel.No. (.....)

SELLER(S): .....(the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as .....(the "Property")  
the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,  
commencing at 12:01 a.m. on the *See "Rider to Listing Agreement"* day of *See "Rider to Listing Agreement"*, 20....., 20.....  
until 11:59 p.m. on the ..... day of ..... 20..... (the "Listing Period").

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

to offer the property for sale at a price of ..... Dollars (CDNS) *1,000*  
*OR* ..... Dollars *in the Seller's sole and absolute discretion*

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.  
The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement in any jurisdiction to any other real estate brokerage for the sale of the property.


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

2. **COMMISSIONS:** In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of .....% of the sale price of the Property or *See "Rider to Listing Agreement"* for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement *OR* such other terms and conditions as the Seller may accept. *Subject to the terms and conditions set out in the Listing Agreement*  
The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within *See "Rider to Listing Agreement"* days after the expiration of the Listing Period (Holdover Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.  
The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect. *Such commission to be payable on the date of completion of the purchase of the Property.*  
Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.  
All amounts set out as commission are to be paid plus applicable taxes on such commission.

3. **REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service.  
The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerages) and to offer to pay the co-operating brokerage a commission of .....% of the sale price of the Property or *See "Rider to Listing Agreement"* out of the commission the Seller pays the Listing Brokerage.

INITIALS OF LISTING BROKERAGE: 

INITIALS OF SELLER(S): 

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

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

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

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

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

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

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

4. **FIDUCIARY DUTY:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefits being received and retained by the Brokerage in addition to the commission as described above.

5. **DEFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

*in a less sense would be a breach of its duties in the seller's absolute discretion*

6. **MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.

7. **WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

8. **INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. The Seller agrees to indemnify and hold harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying data form. The Seller warrants the Property is insured, including personal liability insurance, against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, sub-agents and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, sub-agents and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.

9. **FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided.

10. **VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

11. **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purposes of listing and marketing the Property including, but not limited to listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the

INITIALS OF LISTING BROKERAGE: 

INITIALS OF SELLER(S): 

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

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

Does

Does Not

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

12. SUCCESSION AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

13. CONFLICT OR INCONSISTENCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedules attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

14. ELECTRONIC COMMUNICATION: This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

15. SCHEDULE(S): See "Rules to Listings Agreement" and data form attached hereto form(s) part of this Agreement.

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

(Authorized to Sign by Listing Brokerage)

DATE: June 26, 17

PETER GARRIGAN (Name of Person Signing)

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

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

(Signature of Seller)

DATE: June 26, 17 (Seal)

416-932-6228 (Tel. No.)

(Signature of Seller)

DATE: (Seal)

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

(Spouse)

DATE: (Seal)

DECLARATION OF INSURANCE

The broker/salesperson

(Name of Broker/Salesperson)

hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

(Signature of Broker/Salesperson)

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a true copy of this Agreement on the day of 20

(Signature of Seller)

Date:

(Signature of Seller)

Date:

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**Schedule "A"**

**Re:** Listing Agreement (the "Agreement") for 2168 and 2174 Ghent Avenue in the city of Burlington, Ontario (the "Property") between **COLLIERS MACAULY NICOLLS INC., BROKERAGE** (the "Listing Brokerage") and **KSV KOFMAN INC.** ("the "Seller"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of the Property owned by 1703858 Ontario Inc. ("1703858") and all of the assets, undertakings and properties of 1703858 acquired for or used in relation to the Property.

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

1. **Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Court order appointing the Seller and/or the Seller's appointment as receiver and manager of the Property owned by 1703858 is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by Court order to enforce their rights and/or remedies against the Property.

2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of the Property unless and until the sale of the Property has been completed and the applicable Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).

3. **Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period.

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

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

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

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an unpriced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));

- (b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below) or that the Listing Brokerage shall pay the Cooperating Agent from the Listing Fee (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the following process:

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

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	which will be made available in the data room.	
Stage 3	➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.	TBD
<i>Phase 3 – Offer Review and Negotiations</i>		
	➤ Proposal short listing and approval. ➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs on one or more times.	TBD
Selection of Successful Bids	➤ Select successful bidder and finalize definitive documents.	TBD
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	TBD

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



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

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

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

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

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information

in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

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

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

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

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

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


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

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

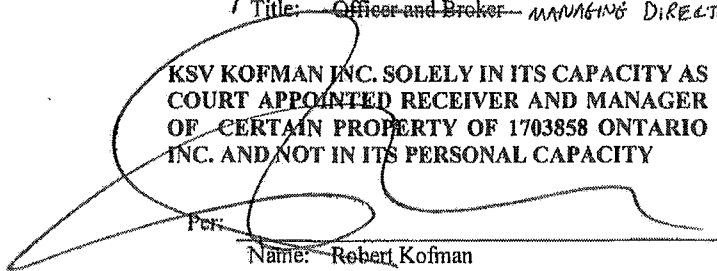
17. **Listing Period.** The term of this Agreement shall begin upon acceptance of this Agreement (the "Commencement Date") and shall expire one minute before midnight on the eight month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any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

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

**COLLIERS MACAULY NICOLLS INC.,  
BROKERAGE**

Per:   
Name: ~~Victor Cotic~~ **PETER GARRIGAN**  
Title: ~~Officer and Broker~~ **MANAGING DIRECTOR**

**KSV KOFMAN INC. SOLELY IN ITS CAPACITY AS  
COURT APPOINTED RECEIVER AND MANAGER  
OF CERTAIN PROPERTY OF 1703858 ONTARIO  
INC. AND NOT IN ITS PERSONAL CAPACITY**

  
Per: \_\_\_\_\_  
Name: **Robert Kofman**  
Title: **President**

Schedule "A"

**Sale of the Property**

The Listing Brokerage is entitled to a listing fee equal to 2.25% of the purchase price of the Property. If the Property is sold through a Cooperating Agent, the Cooperating Agent will be entitled to a further commission of 1% of the purchase price of the Property.

**Sale of all Properties to one Purchaser**

The Listing Brokerage is also selling: (i) 169 Borden Avenue, Kitchener; (ii) 103 and 109 Garden Drive, Oakville (collectively, with the Property, the "Properties"). If the Properties are sold to a single purchaser, the Listing Brokerage is entitled to a listing fee equal to 1.95% of the purchase price of the Properties. If the Properties are sold through a Cooperating Agent to a single purchaser, the Cooperating Agent will be entitled to a further commission of 1% of the purchase price of the Properties.

# TAB "E"

## Appendix "E"

**OREA** Ontario Real Estate Association  
Form 200  
for use in the Province of Ontario

### Listing Agreement Authority to Offer for Sale

**MLS**  
*[Handwritten Signature]*  
(Seller's initials)

**EXCLUSIVE**  
*[Handwritten Signature]*  
(Seller's initials)

This is a Multiple Listing Service® Agreement

OR Exclusive Listing Agreement

BETWEEN:

BROKERAGE:

*See "Rider to Listing Agreement"*

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

SELLER(S):

(the "Seller")

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

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

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

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

to offer the property for sale at a price of ..... Dollars (CAD) *1000*

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

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

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

**2. COMMISSIONS:** In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of .....% of the sale price of the Property or *See "Rider to Listing Agreement"* for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement *See "Rider to Listing Agreement"* such other terms and conditions as the Seller may accept *See "Rider to Listing Agreement"* subject to the Seller's and to the Listing Brokerage's *See "Rider to Listing Agreement"* The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or *See "Rider to Listing Agreement"* anyone on the Seller's behalf within *See "Rider to Listing Agreement"* days after the expiration of the Listing Period (whether Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement. The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect; *See "Rider to Listing Agreement"* said commission to be payable on the date of completion of the purchase of the Property. Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amount paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission. All amounts set out as commission are to be paid plus applicable taxes on such commission.

**3. REPRESENTATIONS:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay the co-operating brokerage a commission of .....% of the sale price of the Property or *See "Rider to Listing Agreement"* out of the commission the Seller pays the Listing Brokerage.

INITIALS OF LISTING BROKERAGE: *[Handwritten Signature]*

INITIALS OF SELLER(S): *[Handwritten Signature]*

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

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

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

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

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

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

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

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

4. **PROBIBITED** The Seller acknowledges that the Brokerage may be receiving a broker's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

5. **REFERRAL OF INQUIRIES** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all offers from any source whatsoever and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

*Unless same would be a breach of his duties in the seller's absolute discretion*

6. **MARKETING** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.

7. **WARRANTY** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

8. **INDEMNIFICATION AND INSURANCE** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying sale form. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, independent contractors and brokers (co-operating brokerage) and any co-operating brokerage and all of its employees, representatives, independent contractors and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.

9. **FAMILY LAW ACT** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided.

10. **VERIFICATION OF INFORMATION** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

11. **USE AND DISTRIBUTION OF INFORMATION** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, inside renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the

INITIALS OF LISTING BROKERAGE:

*[Handwritten initials]*

INITIALS OF SELLER(S):

*[Handwritten initials]*



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

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

Does  
Does Not

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

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

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

DATE June 26, 17 Peter Barrigan (Name of Person Signing)

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

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal DATE June 26, 17 416-952-6228 (Tel. No.)

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

DECLARATION OF INSURANCE The broker/salesperson hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBSA) and Regulations.

ACKNOWLEDGEMENT The Seller(s) hereby acknowledge that the Seller(s) fully understood the terms of this Agreement and have received a true copy of this Agreement on the day of 20

Form 200 Revised 2015 Page 3 of 3

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Schedule "A"

**Re:** Listing Agreement (the "Agreement") for 103 and 109 Garden Drive in the city of Oakville, Ontario (the "Property") between **COLLIERS MACAULY NICOLLS INC., BROKERAGE** (the "Listing Brokerage") and **KSV KOFMAN INC.** ("the "Seller"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of the Property owned by Memory Care Investments (Oakville) Ltd. ("Memory Care Oakville") and all of the assets, undertakings and properties of Memory Care Oakville acquired for or used in relation to the Property.

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

1. **Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Court order appointing the Seller and/or the Seller's appointment as receiver and manager of the Property owned by Memory Care Oakville is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by Court order to enforce their rights and/or remedies against the Property.

2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of the Property unless and until the sale of the Property has been completed and the applicable Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).

3. **Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period.

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

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

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

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an un-priced basis (save and except as described in (b) below with respect to the Multiple Listings

Service ("MLS"));

- (b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below) or that the Listing Brokerage shall pay the Cooperating Agent from the Listing Fee (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the following process:

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

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>➤ The Seller will prepare a Vendor's form of Purchase and Sale Agreement (the "PSA"), which will be made available in the data room.</li> </ul>	
Stage 3	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.</li> </ul>	TBD
<i>Phase 3 - Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> <li>➤ Proposal short listing and approval.</li> <li>➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs on one or more times.</li> </ul>	TBD
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	TBD
Sale Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for sale approval and close transaction.</li> </ul>	TBD

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

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

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

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

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

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

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information

in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

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

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

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

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

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

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

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

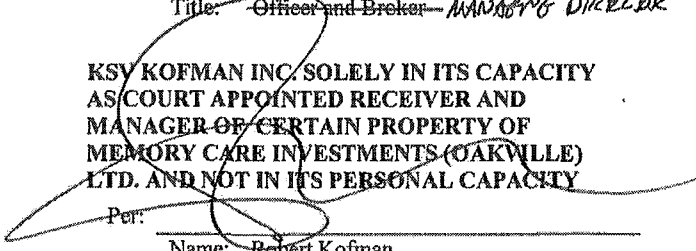
17. **Listing Period.** The term of this Agreement shall begin upon acceptance of this Agreement (the "Commencement Date") and shall expire one minute before midnight on the eight month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any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

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

COLLIERS MACAULY NICOLLS INC.,  
BROKERAGE

Per:   
Name: ~~Victor Cotic~~ PETER GARRIGAN  
Title: ~~Officer and Broker~~ MANAGING DIRECTOR

KSY KOFMAN INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER AND  
MANAGER OF CERTAIN PROPERTY OF  
MEMORY CARE INVESTMENTS (OAKVILLE)  
LTD. AND NOT IN ITS PERSONAL CAPACITY

Per:   
Name: Robert Kofman  
Title: President

Schedule "A"

**Sale of the Property**

The Listing Brokerage is entitled to a listing fee equal to 2.25% of the purchase price of the Property. If the Property is sold through a Cooperating Agent, the Cooperating Agent will be entitled to a further commission of 1% of the purchase price of the Property.

**Sale of all Properties to one Purchaser**

The Listing Brokerage is also selling: (i) 169 Borden Avenue, Kitchener; (ii) 2168 and 2174 Ghent Avenue, Burlington (collectively, with the Property, the "Properties"). If the Properties are sold to a single purchaser, the Listing Brokerage is entitled to a listing fee equal to 1.95% of the purchase price of the Properties. If the Properties are sold through a Cooperating Agent to a single purchaser, the Cooperating Agent will be entitled to a further commission of 1% of the purchase price of the Properties.



# TAB “F”

## Appendix "F"


**Listing Agreement  
Authority to Offer for Sale**

This is a **Multiple Listing Service® Agreement**  OR **Exclusive Listing Agreement**   
(Seller's initials) (Seller's initials)

**BETWEEN:**  
**BROKERAGE:** See "Rider to Listing Agreement"  
.....(the "Listing Brokerage") Tel.No. (.....)

**SELLER(S):** .....(the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as  
.....(the "Property")  
the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,  
commencing at 12:01 a.m. on the See "Rider to Listing Agreement" 20.....  
until 11:59 p.m. on the ..... day of ..... 20..... (the "Listing Period"),

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

to offer the property for sale at a price of ..... Dollars (CAD) 1,000  
..... in the Seller's sole and absolute discretion

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

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

- 1. DEFINITIONS AND INTERPRETATION:** For the purposes of this Listing Agreement ("Authority" or "Agreement"), "Seller" includes vendor, a "buyer" includes a purchaser, or a prospective purchaser and a "real estate board" includes a real estate association. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.
- 2. COMMISSIONS:** In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of .....% of the sale price of the Property or See "Rider to Listing Agreement" for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement OR such other terms and conditions as the Seller may accept. Subject to the Seller's and commission set out in the Listing Agreement. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within See "Rider to Listing Agreement" days after the expiration of the Listing Period (Holder's Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement. The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property. Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's collector not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission. All amounts set out as commission are to be paid plus applicable taxes on such commission.

**3. REPRESENTATIONS:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay the co-operating brokerage a commission of .....% of the sale price of the Property or See "Rider to Listing Agreement" out of the commission the Seller pays the Listing Brokerage.

**INITIALS OF LISTING BROKERAGE:**  **INITIALS OF SELLER(S):** 

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

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

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

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

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

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

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

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

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

INITIALS OF LISTING BROKERAGE: 

INITIALS OF SELLER(S): 

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

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

Does

Does Not

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

12. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

13. CONFLICT OR DISCREPANCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

14. ELECTRONIC COMMUNICATIONS: This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

15. SCHEDULE(S): See "Refer to Listing Agreement" and data form attached hereto form(s) part of this Agreement.

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

DATE: June 26, 17 PETER GARRIGAN (Name of Person Signing)

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

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

DATE: June 26, 17 416-932-6228 (Tel. No.)

DATE: (Tel. No.)

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

DATE: (Tel. No.)

DECLARATION OF INSURANCE

The broker/salesperson (Name of Broker/Salesperson)

hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

(Signature(s) of Broker/Salesperson)

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a true copy of this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Date: (Signature of Seller)

Date: (Signature of Seller)

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**Schedule "A"**

**Re:** Listing Agreement (the "**Agreement**") for 169 Borden Avenue in the city of Kitchener, Ontario (the "**Property**") between **COLLIERS MACAULY NICOLLS INC., BROKERAGE** (the "**Listing Brokerage**") and **KSV KOFMAN INC.** ("the "**Seller**"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of the Property owned by Memory Care Investments (Kitchener) Ltd. ("**Memory Care Kitchener**") and all of the assets, undertakings and properties of Memory Care Kitchener acquired for or used in relation to the Property.

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

1. **Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Court order appointing the Seller and/or the Seller's appointment as receiver and manager of the Property owned by Memory Care Kitchener is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by Court order to enforce their rights and/or remedies against the Property.

2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of the Property unless and until the sale of the Property has been completed and the applicable Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).

3. **Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("**Holdover Period**"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "**New Agent**") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period.

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

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

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

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an unpriced basis (save and except as described in (b) below with respect to the Multiple Listings

Service ("MLS");

- (b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below) or that the Listing Brokerage shall pay the Cooperating Agent from the Listing Fee (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the following process:

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

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>➤ The Seller will prepare a Vendor's form of Purchase and Sale Agreement (the "PSA"), which will be made available in the data room.</li> </ul>	
Stage 3	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.</li> </ul>	TBD
<i>Phase 3 - Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> <li>➤ Proposal short listing and approval.</li> <li>➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs on one or more times.</li> </ul>	TBD
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	TBD
Sale Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for sale approval and close transaction.</li> </ul>	TBD

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



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

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

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

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

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

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information

in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

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

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

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

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

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

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

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

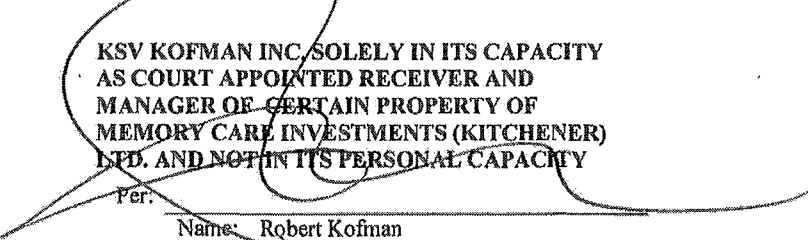
17. **Listing Period.** The term of this Agreement shall begin upon acceptance of this Agreement (the "Commencement Date") and shall expire one minute before midnight on the eight month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any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

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

**COLLIERS MACAULY NICOLLS INC.,  
BROKERAGE**

Per:   
Name: ~~Victor Gotic~~ **PETER GARRIGANO**  
Title: ~~Officer and Broker~~ **MANAGING DIRECTOR**

**KSV KOFMAN INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER AND  
MANAGER OF CERTAIN PROPERTY OF  
MEMORY CARE INVESTMENTS (KITCHENER)  
LTD. AND NOT IN ITS PERSONAL CAPACITY**

Per:   
Name: Robert Kofman  
Title: President

Schedule "A"

**Sale of the Property**

The Listing Brokerage is entitled to a listing fee equal to 2.25% of the purchase price of the Property. If the Property is sold through a Cooperating Agent, the Cooperating Agent will be entitled to a further commission of 1% of the purchase price of the Property.

**Sale of all Properties to one Purchaser**

The Listing Brokerage is also selling: (i) 2168 and 2174 Ghent Avenue, Burlington; (ii) 103 and 109 Garden Drive, Oakville (collectively, with the Property, the "Properties"). If the Properties are sold to a single purchaser, the Listing Brokerage is entitled to a listing fee equal to 1.95% of the purchase price of the Properties. If the Properties are sold through a Cooperating Agent to a single purchaser, the Cooperating Agent will be entitled to a further commission of 1% of the purchase price of the Properties.

**TAB “G”**

## Appendix "G"

**Listing Agreement**  
Authority to Offer for Sale

This is a **Multiple Listing Service® Agreement**  OR **Exclusive Listing Agreement**  **EXCLUSIVE**  
(Seller's initials) (Seller's initials)

**BETWEEN:**  
**BROKERAGE:** See "Rider to Listing Agreement"  
(the "Listing Brokerage") Tel.No. (.....)

**SELLER(S):** ..... (the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as ..... (the "Property")  
the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,  
commencing at 12:01 a.m. on the See "Rider to Listing Agreement" 20.....  
until 11:59 p.m. on the ..... day of ..... 20..... (the "Listing Period"),

Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if a MLS® listing may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act (2007), if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.  (Seller's initials)

to offer the property for sale at a price of ..... Dollars (CAD) 1000  
..... in the Seller's sole and absolute discretion

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

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

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

**2. COMMISSIONS:** In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of .....% of the sale price of the Property or See "Rider to Listing Agreement" for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement OR such other terms and conditions as the Seller may accept, subject to the Seller's and co-operating broker's consent in the Listing Agreement. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within ..... days after the expiration of the Listing Period (Holdover Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement. The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect. Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's collector not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission. All amounts set out as commission are to be paid plus applicable taxes on such commission.

**3. REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay the co-operating brokerage a commission of .....% of the sale price of the Property or See "Rider to Listing Agreement" out of the commission the Seller pays the Listing Brokerage.

**INITIALS OF LISTING BROKERAGE:**  **INITIALS OF SELLER(S):**

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

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

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

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

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

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

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

**4. FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

**5. REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

*IN THIS SENSE, I WILL BE A BREACH OF HIS DUTIES IN THE SELLER'S ABSOLUTE DECISION-07*  
*(PW)*

**6. MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.

**7. WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

**8. INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, and damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the non-compliance with laws. The Seller warrants the Property is insured, including personal liability insurance, against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who stands or visits the Property.

**9. FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided.

**10. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

**11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the

INITIALS OF LISTING BROKERAGE: *(Signature)*

INITIALS OF SELLER(S): *(Signature)*

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

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



Does



Does Not

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

12. SUCCESSIONS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

13. CONFLICT OR DISCREPANCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein

14. ELECTRONIC COMMUNICATIONS: This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

15. SCHEDULE(S): See "Refer to Listing Agreement" and data form attached hereto form(s) part of this Agreement.

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

DATE: June 23/17 RAMONA URSA  
(Name of Person Signing)

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

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

DATE: JUNE 26, 17 416 932 6228  
(Tel. No.)

DATE: \_\_\_\_\_  
(Spouse)

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

DATE: \_\_\_\_\_  
(Spouse)

DECLARATION OF INSURANCE

The broker/salesperson... hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

ACKNOWLEDGEMENT

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

DATE: \_\_\_\_\_  
(Signature of Seller)

DATE: \_\_\_\_\_  
(Signature of Seller)

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## Schedule "A"

Re: Listing Agreement (the "Agreement") for 555 Princess Street in the city of Kingston, Ontario (the "Property") between SVN ROCK ADVISORS INC. (the "Listing Brokerage") and KSV KOFMAN INC. ("the Seller"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of the Property owned by Textbook (555 Princess Street) Inc. ("Textbook") and all of the assets, undertakings and properties of Textbook acquired for or used in relation to the Property.

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

1. **Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Court order appointing the Seller and/or the Seller's appointment as receiver and manager of the Property owned by Textbook is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by Court order to enforce their rights and/or remedies against the Property.

2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of the Property unless and until the sale of the Property has been completed and the applicable Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).

3. **Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period.

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

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

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

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an un-priced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));

- (b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below) or that the Listing Brokerage shall pay the Cooperating Agent from the Listing Fee (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the following process:

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

RW

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	which will be made available in the data room.	
Stage 3	➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.	TBD
<i>Phase 3 - Offer Review and Negotiations</i>		
	➤ Proposal short listing and approval. ➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs on one or more times.	TBD
Selection of Successful Bids	➤ Select successful bidder and finalize definitive documents.	TBD
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	TBD

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



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

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

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

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

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

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information

in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

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

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

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

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

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

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


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

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



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

SVN ROCK ADVISORS INC.

Per: 

Name: ~~Derek Lobo~~

Title: ~~Officer and Broker~~

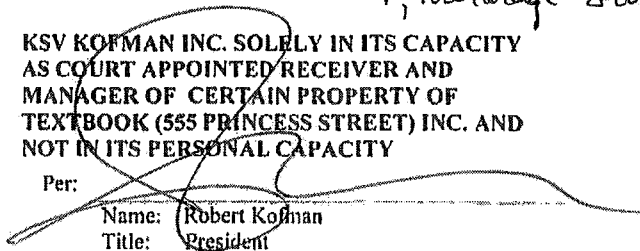
*R. URSU*  
*VP, Brokerage SVUKE*

KSV KOFMAN INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER AND  
MANAGER OF CERTAIN PROPERTY OF  
TEXTBOOK (555 PRINCESS STREET) INC. AND  
NOT IN ITS PERSONAL CAPACITY

Per:

Name: ~~Robert Kofman~~

Title: ~~President~~



Schedule "A"

The Listing Fee is equal to 3% of the purchase price of the Property. If the purchase price is greater than \$6,737,823, representing 85% of the principal debt owing to Textbook Student Suites (555 Princess Street) Trustee Corporation, then SVN will be entitled to an additional 1% commission on the purchase price.

RW



**TAB “H”**

**Appendix "H"**

**Listing Agreement  
Authority to Offer for Sale**

This is a **Multiple Listing Service® Agreement**  **OR** **Exclusive Listing Agreement**  **EXCLUSIVE**

**BETWEEN:** *See "Rider to Listing Agreement"*  
**BROKERAGE:** *See "Rider to Listing Agreement"*  
(the "Listing Brokerage") Tel.No. (.....)

**SELLER(S):** ..... (the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as ..... (the "Property")  
the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,  
commencing at 12:01 a.m. on the *See "Rider to Listing Agreement"* 20....., 20.....  
until 11:59 p.m. on the ..... day of ..... 20..... (the "Listing Period").

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

to offer the property for sale at a price of ..... Dollars (CAD) *1000*

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

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

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

**2. COMMISSION:** In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of ..... % of the sale price of the Property or *See "Rider to Listing Agreement"* .....  
for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement *See "Rider to Listing Agreement"* such other terms and conditions as the Seller may accept *subject to the terms and conditions set out in the Listing Agreement*.  
The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within *See "Rider to Listing Agreement"* days after the expiration of the Listing Period (Holdover Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period.  
If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.  
The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, self-decision to be payable on the date set for completion of the purchase of the Property.  
Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.  
All amounts set out as commission are to be paid plus applicable taxes on such commission.

**3 REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service.  
The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay the co-operating brokerage a commission of ..... % of the sale price of the Property or *See "Rider to Listing Agreement"* .....  
out of the commission the Seller pays the Listing Brokerage.

**INITIALS OF LISTING BROKERAGE:** *pu* **INITIALS OF SELLER(S):** *SK*

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

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

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

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

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

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

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

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

INITIALS OF LISTING BROKERAGE: *RM*

INITIALS OF SELLER(S): *DL*

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

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

Does  Does Not

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

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

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

[Signature] DATE June 25/10 RAMONA URU (Name of Person Signing)

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

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

[Signature] DATE June 26, 10 416.932.6228 (Tel. No.)

[Signature] DATE [Seal]

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

[Signature] DATE [Seal]

DECLARATION OF INSURANCE

The broker/salesperson (Name of Broker/Salesperson)

hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

(Signature(s) of Broker/Salesperson)

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a true copy of this Agreement on the ... day of ... 20...

[Signature of Seller] Date:

[Signature of Seller] Date:

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**Schedule "A"**

Re: Listing Agreement (the "Agreement") for 525, 527, and 531 Princess Street and 349 and 351 Alfred Street in the city of Kingston, Ontario (the "Property") between SVN ROCK ADVISORS INC. (the "Listing Brokerage") and KSV KOFMAN INC. ("the "Seller"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of the Property owned by Textbook (525 Princess Street) Inc. ("Textbook") and all of the assets, undertakings and properties of Textbook acquired for or used in relation to the Property.

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

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

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

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

4. **Listing Brokerage's Duties.** The Listing Brokerage covenants and agrees with the Seller to:
  - (a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an un-priced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));



- (b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00 (as a price is required) and the Commissions to Co-operating Brokerage shall be \$1.00 (it being the intention that the buyer(s) shall be responsible for any commissions to any Cooperating Agents (as defined below) or that the Listing Brokerage shall pay the Cooperating Agent from the Listing Fee (as defined below));
- (c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the following process:

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

*(Handwritten initials)*

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	which will be made available in the data room.	
Stage 3	➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.	TBD
<i>Phase 3 - Offer Review and Negotiations</i>		
	➤ Proposal short listing and approval ➤ Further Bidding - Prospective purchasers may be asked to re-submit PSAs on one or more times.	TBD
Selection of Successful Bids	➤ Select successful bidder and finalize definitive documents.	TBD
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	TBD

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





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

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

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

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

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

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information

in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

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

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

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing and Section 7 of the pre-printed portion of this Agreement, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property. Section 7 of the pre-printed portion of this Agreement is qualified by the previous sentence.

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

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

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

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

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

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

SVN ROCK ADVISORS INC.

Per:

Name: ~~Derek Lobo~~

Title: ~~Officer and Broker~~

*RAMONA URSU  
VP, Pro Karage Sewbs*

KSY KOFMAN INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER AND  
MANAGER OF CERTAIN PROPERTY OF  
TEXTBOOK (535 PRINCESS STREET) INC. AND  
NOT IN ITS PERSONAL CAPACITY

Per:

Name: Robert Kofman

Title: President

Schedule "A"

The Listing Fee is equal to 3% of the purchase price of the Property. If the purchase price is greater than \$5,428,780, representing 85% of the principal debt owing to Textbook Student Suites (525 Princess Street) Trustee Corporation, then the Listing Brokerage will be entitled to an additional 1% commission on the purchase price.



**TAB “I”**

## Appendix "I"

# MARSHALLZEHR

— REAL ESTATE CAPITAL —

May 29, 2017

KSV Kofman Inc.  
150 King Street W, Suite 2308  
Toronto, ON M5H 1J9

Attention: Robert Kofman

Dear Mr. Kofman,

Re: MarshallZehr Group Inc. (the "Lender") loan to KSV Kofman Inc., solely in its capacity as proposed Receiver and Manager of certain property of Textbook (525 Princess Street) Inc. (the "Borrower")

The Lender is pleased to offer financing by way of a loan described in this letter agreement (the "Agreement") subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency.

- Facility:** Non-revolving loan of up to \$400,000 (the "Loan").
- Purpose:** The purpose of the Loan is to fund the costs (including professional costs) of the receiver and applicable Borrower for 525 Princess Street, 531 Princess Street, 349 Alfred Street and 351 Alfred Street, Kingston, ON, including marketing the property of the applicable Borrower for sale to potential buyers.
- Term:** The earliest of (i) demand; and (ii) nine (9) months from the date of the initial advance (the "Term"), which may be extended for an additional twelve (12) months upon at least 30 days prior written notice by Borrower to Lender.
- Facility Advances:** Available by way of advances to the Borrower to be evidenced by a Receiver's Certificate in a form satisfactory to the Lender each in the minimum amount of \$50,000.
- Security and Draws:** Certificates shall be approved by the Court in the Appointment Order to be issued forthwith upon the Proposed Receiver being appointed as the Receiver or Receiver and Manager of the Property. The Loan is to be secured by the Receiver's Borrowings Charge. The Proposed Receiver is to consent to a charge on the Property, if required by the Lender, to reflect the Lender's interest in the Receiver's Borrowings Charge.
- Interest Rate and Fees:**
- Interest:** Annual rate of 9.5% calculated on the daily outstanding balance of the Loan and compounded monthly, not in advance with interest only payments paid monthly from the Interest Reserve.
- Fee:** A fee of \$15,000 will be due and payable to the Lender at the time of the first advance of the Loan and shall be deducted from the advance of the Loan.
- Expense:** The Borrower shall be responsible for all costs, fees and expenses incurred by the Lender in connection with the negotiation, preparation and administration of this Agreement and the enforcement of the Security (as hereinafter defined) including, without limitation, all court attendances in connection therewith. All such fees and expenses shall be added to the Loan and secured by the Security.

- Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded monthly, paid monthly from the Interest Reserve.
- Advance Deductions:** At the time of the initial advance, the Lender may at its sole discretion, deduct an amount equal to the applicable interest for such advance for the balance of the term of the Loan as an interest reserve (the "Interest Reserve").
- Interest Reserve Amount: \$28,500
- The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the outstanding balance of the Loan. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.
- Prepayment:** The Loan can be repaid in whole or in part at any time without any fee or penalty upon three (3) Business Days written notice to the Lender.
- Remedies:** In the event that the Loan is not paid in full at the end of the Term, the Lender may exercise all rights and remedies available to it under the security or at law.
- General:** Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms hereof.
- Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the Facility and security documentation, including the Security, the provisions of this Agreement shall prevail.
- Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof may be assigned by the Lender, or monies required to be advanced may be syndicated by the Lender from time to time. For greater certainty, the Lender may assign or grant participation in all or part of this Agreement or in the Facility made hereunder without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Lender is concerned and rendering any balance then outstanding under the Facility immediately due and payable at the option of the Lender.
- Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.
- Governing Law: This Agreement shall be construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.



**Counterparts:** This Agreement may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

**Time:** Time shall be of the essence in all provisions of this Agreement.

**Whole Agreement, Amendments and Waiver:** This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the entire agreement between the parties in respect of the Loan. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereof. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

**Conditions:** The Lender shall not be required to advance any funds prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions:

1. Land valued at a minimum of \$2.0MM, satisfactory to the Lender.
2. The Lender shall have a period of 5 business days to secure the syndication of the Offer Letter.


**Expiration:** This Agreement must be accepted by the Borrower by no later than 5:00 pm on June 5<sup>th</sup>, 2017, after which this Agreement will expire.

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us.

We thank you for allowing us the opportunity to provide you with this offer of financing.

Yours truly,

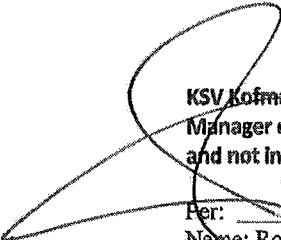
**MARSHALLZEHR GROUP INC.**

Per:   
 Name: DAVID MARSHALL  
 Title: CO-CEO

I have authority to bind the Corporation.

**ACCEPTANCE**

The undersigned hereby accepts this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.



**KSV Kofman Inc., solely in its capacity as proposed Receiver and  
Manager of certain property of textbook (525 Princess Street) Inc.  
and not in its personal or in any other capacity.**

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

Name: Robert Kofman

Title: President and Managing Director

I have authority to bind the Corporation.

# MARSHALLZEHR

— REAL ESTATE CAPITAL —

May 29, 2017

KSV Kofman Inc.  
150 King Street W, Suite 2308  
Toronto, ON M5H 1J9

Attention: Robert Kofman

Dear Mr. Kofman,

Re: MarshallZehr Group Inc. (the "Lender") loan to KSV Kofman Inc., solely in its capacity as proposed Receiver and Manager of certain property of Textbook (555 Princess Street) Inc. (the "Borrower")

The Lender is pleased to offer financing by way of a loan described in this letter agreement (the "Agreement") subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency.

- Facility:** Non-revolving loan of up to \$400,000 (the "Loan").
- Purpose:** The purpose of the Loan is to fund the costs (including professional costs) of the receiver and applicable Borrower for 555 Princess Street, Kingston, ON, including marketing the property of the applicable Borrower for sale to potential buyers.
- Term:** The earliest of (i) demand; and (ii) nine (9) months from the date of the initial advance (the "Term"), which may be extended for an additional twelve (12) months upon at least 30 days prior written notice by Borrower to Lender.
- Facility Advances:** Available by way of advances to the Borrower to be evidenced by a Receiver's Certificate in a form satisfactory to the Lender each in the minimum amount of \$50,000.
- Security and Draws:** Certificates shall be approved by the Court in the Appointment Order to be issued forthwith upon the Proposed Receiver being appointed as the Receiver or Receiver and Manager of the Property. The Loan is to be secured by the Receiver's Borrowings Charge. The Proposed Receiver is to consent to a charge on the Property, if required by the Lender, to reflect the Lender's interest in the Receiver's Borrowings Charge.
- Interest Rate and Fees:**
- Interest:** Annual rate of 9.5% calculated on the daily outstanding balance of the Loan and compounded monthly, not in advance with interest only payments paid monthly from the Interest Reserve.
- Fee:** A fee of \$15,000 will be due and payable to the Lender at the time of the first advance of the Loan and shall be deducted from the advance of the Loan.
- Expense:** The Borrower shall be responsible for all costs, fees and expenses incurred by the Lender in connection with the negotiation, preparation and administration of this Agreement and the enforcement of the Security (as hereinafter defined) including, without limitation, all court attendances in connection therewith. All such fees and expenses shall be added to the Loan and secured by the Security.

**Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded monthly, paid monthly from the Interest Reserve.

**Advance Deductions:** At the time of the initial advance, the Lender may at its sole discretion, deduct an amount equal to the applicable interest for such advance for the balance of the term of the Loan as an interest reserve (the "Interest Reserve").

Interest Reserve Amount: \$28,500

The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the outstanding balance of the Loan. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.

**Prepayment:** The Loan can be repaid in whole or in part at any time without any fee or penalty upon three (3) Business Days written notice to the Lender.

**Remedies:** In the event that the Loan is not paid in full at the end of the Term, the Lender may exercise all rights and remedies available to it under the security or at law.

**General:** Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms hereof.

Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the Facility and security documentation, including the Security, the provisions of this Agreement shall prevail.

Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof may be assigned by the Lender, or monies required to be advanced may be syndicated by the Lender from time to time. For greater certainty, the Lender may assign or grant participation in all or part of this Agreement or in the Facility made hereunder without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Lender is concerned and rendering any balance then outstanding under the Facility immediately due and payable at the option of the Lender.

Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

Governing Law: This Agreement shall be construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

Counterparts: This Agreement may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Time: Time shall be of the essence in all provisions of this Agreement.

Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the entire agreement between the parties in respect of the Loan. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereof. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

**Conditions:** The Lender shall not be required to advance any funds prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions:

1. Land valued at a minimum of \$2.0MM, satisfactory to the Lender.
2. The Lender shall have a period of 5 business days to secure the syndication of the Offer Letter.


**Expiration:** This Agreement must be accepted by the Borrower by no later than 5:00 pm on June 5<sup>th</sup>, 2017, after which this Agreement will expire.

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us.

We thank you for allowing us the opportunity to provide you with this offer of financing.

Yours truly,

**MARSHALLZEHR GROUP INC.**

Per:   
 Name: DAVID MARSHALL  
 Title: CO-CEO  
 I have authority to bind the Corporation.

**ACCEPTANCE**

The undersigned hereby accepts this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**KSV Kofman Inc., solely in its capacity as proposed Receiver and  
Manager of certain property of textbook (555 Princess Street) Inc.  
and not in its personal or in any other capacity.**

Per. \_\_\_\_\_

**Name: Robert Kofman**

**Title: President and Managing Director**

**I have authority to bind the Corporation.**

# MARSHALLZEHR

— REAL ESTATE CAPITAL —

May 29, 2017

KSV Kofman Inc.  
150 King Street W, Suite 2308  
Toronto, ON M5H 1J9

Attention: Robert Kofman

Dear Mr. Kofman,

Re: MarshallZehr Group Inc. (the "Lender") loan to KSV Kofman Inc., solely in its capacity as proposed Receiver and Manager of certain property of Legacy Lane Investments Ltd. (the "Borrower")

The Lender is pleased to offer financing by way of a loan described in this letter agreement (the "Agreement") subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency.

- Facility:** Non-revolving loan of up to \$300,000 (the "Loan").
- Purpose:** The purpose of the Loan is to fund the costs (including professional costs) of the receiver and applicable Borrower for 18 Legacy Lane, Huntsville, ON, including marketing the property of the applicable Borrower for sale to potential buyers.
- Term:** The earliest of (i) demand; and (ii) nine (9) months from the date of the initial advance (the "Term"), which may be extended for an additional twelve (12) months upon at least 30 days prior written notice by Borrower to Lender.
- Facility Advances:** Available by way of advances to the Borrower to be evidenced by a Receiver's Certificate in a form satisfactory to the Lender each in the minimum amount of \$50,000.
- Security and Draws:** Certificates shall be approved by the Court in the Appointment Order to be issued forthwith upon the Proposed Receiver being appointed as the Receiver or Receiver and Manager of the Property. The Loan is to be secured by the Receiver's Borrowings Charge. The Proposed Receiver is to consent to a charge on the Property, if required by the Lender, to reflect the Lender's interest in the Receiver's Borrowings Charge.
- Interest Rate and Fees:**
- Interest:** Annual rate of 9.5% calculated on the daily outstanding balance of the Loan and compounded monthly, not in advance with interest only payments paid monthly from the Interest Reserve.
- Fee:** A fee of \$15,000 will be due and payable to the Lender at the time of the first advance of the Loan and shall be deducted from the advance of the Loan.
- Expense:** The Borrower shall be responsible for all costs, fees and expenses incurred by the Lender in connection with the negotiation, preparation and administration of this Agreement and the enforcement of the Security (as hereinafter defined) including, without limitation, all court attendances in connection therewith. All such fees and expenses shall be added to the Loan and secured by the Security.

- Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded monthly, paid monthly from the Interest Reserve.
- Advance Deductions:** At the time of the initial advance, the Lender may at its sole discretion, deduct an amount equal to the applicable interest for such advance for the balance of the term of the Loan as an interest reserve (the "Interest Reserve").
- Interest Reserve Amount: \$21,375
- The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the outstanding balance of the Loan. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.s
- Prepayment:** The Loan can be repaid in whole or in part at any time without any fee or penalty upon three (3) Business Days written notice to the Lender.
- Remedies:** In the event that the Loan is not paid in full at the end of the Term, the Lender may exercise all rights and remedies available to it under the security or at law.
- General:** Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms hereof.

Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the Facility and security documentation, including the Security, the provisions of this Agreement shall prevail.

Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof may be assigned by the Lender, or monies required to be advanced may be syndicated by the Lender from time to time. For greater certainty, the Lender may assign or grant participation in all or part of this Agreement or in the Facility made hereunder without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Lender is concerned and rendering any balance then outstanding under the Facility immediately due and payable at the option of the Lender.

Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

Governing Law: This Agreement shall be construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.



Counterparts: This Agreement may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Time: Time shall be of the essence in all provisions of this Agreement.

Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the entire agreement between the parties in respect of the Loan. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereof. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

**Conditions:** The Lender shall not be required to advance any funds prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions:

1. Land valued at a minimum of \$1.2MM, satisfactory to the Lender.
2. The Lender shall have a period of 5 business days to secure the syndication of the Offer Letter.

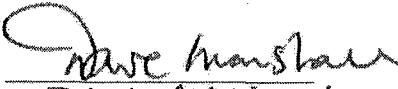
**Expiration:** This Agreement must be accepted by the Borrower by no later than 5:00 pm on June 5<sup>th</sup>, 2017, after which this Agreement will expire.

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us.

We thank you for allowing us the opportunity to provide you with this offer of financing.

Yours truly,

MARSHALLZEHR GROUP INC.

Per:   
 Name: DAVID MARSHALL  
 Title: CO-CEO  
 I have authority to bind the Corporation.

**ACCEPTANCE**

The undersigned hereby accepts this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**KSV Kofman Inc., solely in its capacity as proposed Receiver and  
Manager of certain property of textbook Legacy Lane  
Investments Ltd. and not in its personal or in any other capacity.**

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

Name: Robert Kofman

Title: President and Managing Director

I have authority to bind the Corporation.

**CONFIDENTIAL**  
**APPENDIX**

**CONFIDENTIAL**

**TAB 3**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	FRIDAY, THE 30 <sup>th</sup>
	)	
JUSTICE MYERS	)	DAY OF JUNE, 2017

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

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

**ORDER**

**THIS MOTION**, made by KSV Kofman Inc. (the “**Receiver**”), in its capacity as receiver and manager of certain property of Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (525 Princess Street) Inc. (“**525 Princess**”) and Textbook (555 Princess Street) Inc. (“**555 Princess**” and, together with Scollard, Kitchener, Oakville, Burlington, Legacy Lane and 525 Princess, the “**Receivership Companies**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the Receiver’s Fifth Report dated June 26, 2017 (the “**Fifth Report**”), together with the appendices thereto,

**AND UPON HEARING** the submissions of counsel for the Receiver and those other counsel present,

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time and manner of service of the Notice of Motion and Motion Record, including the Fifth Report, are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **ENGAGEMENT OF LISTING AGENTS**

2. **THIS COURT ORDERS** that the Receiver and Royal Lepage Lakes of Muskoka Realty Inc. ("**Royal Lepage**") are authorized to execute and to carry out and perform their respective obligations under the Listing Agreement dated June 23, 2017 between the Receiver and Royal Lepage, attached as Appendix "C" to the Fifth Report (the "**Royal Lepage Listing Agreement**").
3. **THIS COURT ORDERS** that the Receiver and Colliers Macaully Nicolls Inc. ("**Colliers**") are authorized to execute and to carry out and perform their respective obligations under the Listing Agreements dated June 26, 2017 between the Receiver and Colliers, attached as Appendices "D", "E" and "F" to the Fifth Report (the "**Colliers Listing Agreements**").
4. **THIS COURT ORDERS** that the Receiver and SVN Rock Advisors Inc. ("**SVN**") are authorized to execute and to carry out and perform their respective obligations under the Listing Agreements dated June 23, 2017 between the Receiver and SVN, attached as Appendices "G" and "H" to the Fifth Report (the "**SVN Listing Agreements**", and together with the Royal Page Listing Agreement and the Collients Listing Agreements, the "**Listing Agreements**").

## **APPROVAL OF STRATEGIC PROCESS**

5. **THIS COURT ORDERS AND DECLARES** that the strategic process (the "**Strategic Process**"), as described in Section 3 of the Fifth Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the Receiver, Royal Lepage, Colliers and SVN be and are hereby authorized and directed to perform their obligations under and in accordance with

the Strategic Process, including under the terms of the Listing Agreements, and to take such further steps as they consider necessary or desirable in carrying out the Strategic Process.

7. **THIS COURT ORDERS** that the Receiver, and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Strategic Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Strategic Process (as determined by this Court).
8. **THIS COURT ORDERS** that in connection with the Strategic Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver, Royal LePage, Colliers and SVN are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver or the applicable listing agent; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. Notwithstanding the foregoing, the transacting party with respect to any property of the Receivership Companies shall be entitled to continue to use the personal information provided to it, and related to such property purchased, in a manner which is in all material respects identical to the prior use of such information by the Receivership Company.

#### **FUNDING**

9. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$300,000 (or such greater amount as this Court may by further



Order authorize) by way of the Legacy Lane Commitment Letter attached to the Fifth Report (the "**Legacy Lane Borrowings**"), which Legacy Lane Borrowings shall benefit from a fixed and specific charge on the property of Legacy Lane 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 (as defined in the Second Amended and Restated Order dated February 2, 2017), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and the Legacy Lane Commitment Letter and the terms and conditions thereof, be and are hereby approved by this Court.

10. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$400,000 (or such greater amount as this Court may by further Order authorize) by way of the 525 Princess Commitment Letter attached to the Fifth Report (the "**525 Princess Borrowings**"), which 525 Princess Borrowings shall benefit from a fixed and specific charge on the property of 525 Princess 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 (as defined in the Second Amended and Restated Order dated February 2, 2017), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and the 525 Princess Commitment Letter and the terms and conditions thereof, be and are hereby approved by this Court.

11. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$400,000 (or such greater amount as this Court may by further Order authorize) by way of the 555 Princess Commitment Letter attached to the Fifth Report (the "**555 Princess Borrowings**"), which 555 Princess Borrowings shall benefit from a fixed and specific charge on the property of 555 Princess 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 (as defined in

the Second Amended and Restated Order dated February 2, 2017), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and the 555 Princess Commitment Letter and the terms and conditions thereof, be and are hereby approved by this Court.

12. **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.
13. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order, including, without limitation, for the Legacy Lane Borrowings, the 525 Princess Borrowings, and the 555 Princess Borrowings.
14. **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.

#### **SEALING ORDER**

15. **THIS COURT ORDERS** that the confidential appendix to the Fifth Report be sealed, kept confidential and not form part of the public record pending further Order of this Court.

#### **GENERAL**

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere 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, to

grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

17. **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.
-

**SCHEDULE "A"**  
**RECEIVER'S 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 the Second Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 2, 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:

[•].

**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**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

**BENNETT JONES LLP**  
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M5X 1A4

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Lawyers for the Receiver,  
KSV Kofman Inc.

**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.**

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

Proceeding commenced at Toronto

**MOTION RECORD  
(Returnable June 30, 2017)**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
Toronto, ON M5X 1A4

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KSV Kofman Inc.